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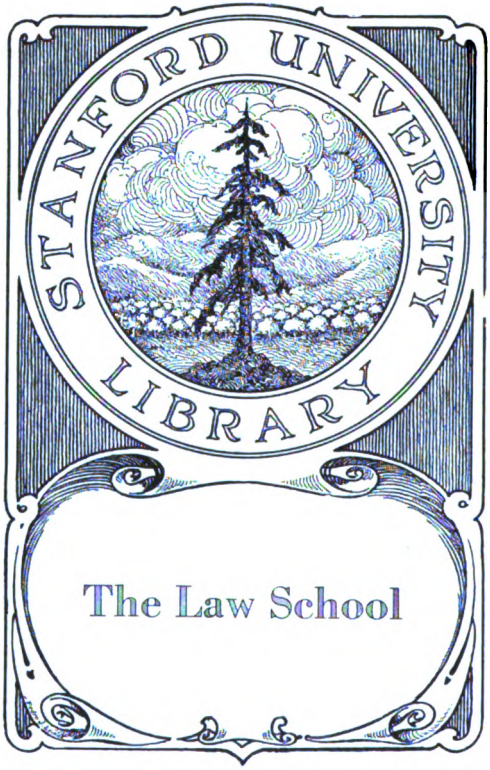

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TREASURY DECISIONS

UNDER CUSTOMS AND OTHER LAWS

VOL. 21

JULY-DECEMBER, 1911

FRANKLIN MACVEAGH
Secretary of the Treasury

WASHINGTON
GOVERNMENT PRINTING OFFICE
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LETTER OF INSTRUCTION.

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., December 30, 1911.

The following instructions are published for the information and guidance of customs officers and others concerned:

1. Decisions of the Board of United States General Appraisers adverse to the Government will, if not appealed from, take effect 60 days after their respective dates, except that decisions based on protests filed in Alaska and in the insular and other outside possessions of the United States will take effect 90 days after their respective dates, in accordance with subsection 29 of section 28 of the act of August 5, 1909. Entries covering the merchandise the subject of such decisions will be reliquidated in harmony therewith at the expiration of the period mentioned, except that entries covering merchandise the subject of decisions of the board which follow a given decision of the Court of Customs Appeals involving the same issue will be reliquidated immediately upon receipt of orders from the board.

2. Entries the subject of protests which have not been forwarded to the board, and which are covered in principle by a given decision of the Court of Customs Appeals, will be reliquidated in harmony with the said decision after 30 days have elapsed from the date thereof.

3. Unliquidated entries which involve issues covered by a given decision of the Court of Customs Appeals, and which would in ordinary course be liquidated within 30 days after the rendering of such decision, will be suspended until 30 days have elapsed from the date of such decision, and will then be liquidated in accordance with the principle laid down by the court.

4. In the absence of specific instructions from the department to the contrary, decisions of the Board of United States General Appraisers adverse to the Government, if appealed from by the department, will not result in any change of practice prior to the decision of the appeal by the Court of Customs Appeals.

5. Decisions of the Court of Customs Appeals adverse to the Government will become effective upon the issuing of orders by the Board of United States General Appraisers pursuant to the mandates of the said court. Entries covering the merchandise the subject of such decisions will be reliquidated only upon receipt of such orders.

FRANKLIN MACVEAGH,
Secretary of the Treasury.

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CUSTOMS.

(T. D. 31735.)

Values of foreign coins.

[Circular No. 42.]

TREASURY DEPARTMENT, *July 1, 1911.*

In pursuance of the provisions of section 25 of the act of August 27, 1894, I hereby proclaim the following estimate by the Director of the Mint of the values of foreign coins to be the values of such coins in terms of the money of account of the United States, to be followed in estimating the value of all foreign merchandise exported to the United States during the quarter beginning July 1, 1911, expressed in any such metallic currencies.

Entries of merchandise liquidated upon the values proclaimed herein will be subject to reliquidation upon the order of the Secretary of the Treasury whenever satisfactory evidence shall be produced to him showing that the values in United States currency of the foreign money specified in the invoices were at the date of certification at least 10 per cent more or less than the values herein proclaimed.

FRANKLIN MACVEAGH, *Secretary.*

ESTIMATE BY DIRECTOR OF MINT OF THE VALUES OF FOREIGN COINS.

Countries.	Legal standard.	Monetary unit.	Value in terms of U. S. money.	Remarks.[1]
Argentine Republic	Gold	Peso	$0.965	Currency: Depreciated paper, convertible at 44 per cent of face value.
Austria-Hungary	Gold	Crown	.203	
Belgium	Gold and silver.	Franc	.193	Member of Latin Union; gold is the actual standard.
Bolivia	Gold	Boliviano	.389	12½ bolivianos equal 1 pound sterling.
Brazil	Gold	Milreis	.546	Currency: Inconvertible paper; exchange rate, approximately, $0.3245.
British Colonies in Australasia and Africa.	Gold	Pound sterling	4.8665	
Canada	Gold	Dollar	1.000	
Central American States:				
Costa Rica	Gold	Colon	.465	
British Honduras	Gold	Dollar	1.000	
Guatemala	Silver	Peso	.389	Currency: Inconvertible paper, much depreciated and subject to wide fluctuations.
Honduras	Silver	Peso	.389	Currency: Inconvertible paper, much depreciated and subject to wide fluctuations.
Nicaragua	Silver	Peso	.389	Currency: Inconvertible paper, much depreciated and subject to wide fluctuations.
Salvador	Silver	Peso	.389	Currency: Inconvertible paper, much depreciated and subject to wide fluctuations.

[1] The exchange rates shown under this heading are recent quotations and given as an indication of the values of currencies which are fluctuating in their relation to the legal standard. They are not to take the place of the consular certificate where it is available.

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ESTIMATE BY DIRECTOR OF MINT OF THE VALUES OF FOREIGN COINS—Continued.

Countries.	Legal standard	Monetary unit.		Value in terms of U. S. money.	Remarks.
Chile	Gold	Peso		$0.365	Currency: Inconvertible paper; exchange rate, approximately, $0.2156.
China	Silver	Tael	Amoy	.638	
			Canton	.636	
			Cheefoo	.610	
			Chin Kiang	.623	
			Fuchau	.590	
			Haikwan (Customs).	.649	
			Hankow	.597	
			Kiaochow	.618	
			Nankin	.631	
			Niuchwang	.598	
			Ningpo	.613	
			Peking	.620	
			Shanghai	.583	
			Swatow	.589	
			Takau	.642	
			Tientsin	.618	
		Dollar	Hongkong	.420	
			British	.420	
			Mexican	.423	
Colombia	Gold	Dollar		1.000	Currency: Inconvertible paper; exchange rate, approximately, $100 paper to $1 gold.
Denmark	Gold	Crown		.268	
Ecuador	Gold	Sucre		.487	
Egypt	Gold	Pound (100 piasters)		4.943	The actual standard is the British pound sterling, which is legal tender for 97½ piasters.
Finland	Gold	Mark		.193	
France	Gold and silver.	Franc		.193	Member of Latin Union; gold is the actual standard.
German Empire	Gold	Mark		.238	
Great Britain	Gold	Pound sterling		4.8665	
Greece	Gold and silver.	Drachma		.193	Member of Latin Union; gold is the actual standard.
Haiti	Gold	Gourde		.965	Currency: Inconvertible paper; exchange rate, approximately, $0.288.
India (British)	Gold	Rupee		.32½	(15 rupees equal 1 pound sterling.)
Italy	Gold and silver.	Lira		.193	Member of Latin Union; gold is the actual standard.
Japan	Gold	Yen		.498	
Liberia	Gold	Dollar		1.000	Currency: Depreciated silver token coins. Customs duties are collected in gold.
Mexico	Gold	Peso		.498	
Netherlands	Gold	Florin		.402	
Newfoundland	Gold	Dollar		1.014	
Norway	Gold	Crown		.268	
Panama	Gold	Balboa		1.000	
Persia	Gold and silver.	Kran		.1704	This is the value of the gold kran. Currency is silver circulating above its metallic value; exchange value of silver kran, approximately, $0.0896.
Peru	Gold	Libra		4.8665	
Philippine Islands	Gold	Peso		.500	
Portugal	Gold	Milreis		1.080	Currency: Inconvertible paper; exchange rate, approximately, $0.9973.
Roumania	Gold	Leu		.193	
Russia	Gold	Ruble		.515	
Santo Domingo	Gold	Dollar		1.000	
Servia	Gold	Dinar		.193	
Siam	Gold	Tical		.3708	
Spain	Gold and silver.	Peseta		.193	Valuation is for the gold peseta; currency is silver circulating above its metallic value; exchange value, approximately, $0.1794.
Straits Settlements	Gold	Dollar		.5677	
Sweden	Gold	Crown		.268	
Switzerland	Gold	Franc		.193	Member of Latin Union; gold is the actual standard.
Turkey	Gold	Piaster		.044	
Uruguay	Gold	Peso		1.034	
Venezuela	Gold	Bolivar		.193	

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(T. D. 31736.)

Peeled melon seeds.

Appeal directed from decision of the Board of United States General Appraisers of May 12, 1911, Abstract 25572 (T. D. 31589), involving the classification of peeled melon seeds.

TREASURY DEPARTMENT, *July 8, 1911.*

SIR: The department is in receipt of your letter of the 28th ultimo, relative to the decision of the Board of United States General Appraisers of May 12, 1911, Abstract 25572 (T. D. 31589), wherein it is held that certain peeled melon seeds, which were assessed with duty as seeds under paragraph 266 of the tariff act of 1909, were properly dutiable as unenumerated articles under paragraph 480 of the said act at 10 per cent ad valorem.

In view of the importance of the issue, you are hereby requested to file, in the name of the Secretary of the Treasury, an application with the United States Court of Customs Appeals for a review of the said decision, in accordance with the provisions of subsection 29 of section 28 of the tariff act of August 5, 1909.

Respectfully, R. O. BAILEY,
(89186.) *Assistant Secretary.*

Mr. WILLIAM K. PAYNE,
Deputy Assistant Attorney General, New York.

(T. D. 31737.)

Drawback on asbestos packing, wound cloth packing, gaskets, and asbestos roofing.

Drawback on asbestos sheet packing, wound cloth packing, and gaskets manufactured by the H. W. Johns-Manville Co., of New York City, with the use of imported asbestos cloth, and asbestos roofing manufactured with the use of imported burlap.

TREASURY DEPARTMENT, *July 8, 1911.*

SIR: Drawback is hereby allowed under section 25 of the tariff act of August 5, 1909, on asbestos sheet packing, asbestos metallic sheet packing, wound cloth packing, and gaskets manufactured by H. W. Johns-Manville Co., of New York City, with the use of imported asbestos cloth, and also on asbestos roofing manufactured by this company with the use of imported burlap. The allowance in the case of the roofing shall not exceed 40 lineal feet of burlap 32 inches in width for each roll (one square), or 80 lineal feet of 32-inch burlap for each roll (two squares).

In the case of the gaskets and the several kinds of packing the allowance for imported asbestos cloth shall not exceed 52.6 per cent of the net weight of the exported article.

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The manufacturer's sworn statements of January 4, 1902, and April 15, 1907, are now on file in your office, and the statements and schedules dated May 26, 1911, are transmitted herewith for filing.

Respectfully, R. O. BAILEY,
(88657.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 31738.)

Quarantine regulations—Additional precautions against cholera.

[Circular No. 45.]

TREASURY DEPARTMENT, *July 6, 1911.*

To National, State, and local quarantine officers, collectors of customs, shipowners and agents, and others concerned:

The following additions to the Quarantine Regulations of the Treasury Department issued October 20, 1910, under the act of Congress approved February 15, 1893, are hereby promulgated and shall remain in force until otherwise ordered:

CHOLERA BACILLUS CARRIERS.

To diminish the danger from cholera bacillus carriers, steerage passengers coming from ports or places where cholera prevails and arriving on vessels upon which cholera has appeared shall be detained 10 days for observation unless after 5 days' detention they are found not to be bacillus carriers.

The same provision shall also apply to other persons arriving on said vessels who for special reasons are deemed liable to be thus infected.

FOOD PRODUCTS BROUGHT BY STEERAGE PASSENGERS FROM PORTS OR PLACES INFECTED WITH CHOLERA.

Attention is called to paragraph 27 of the Special Regulations on Account of Cholera, to be enforced at foreign ports, which provides as follows:

27. Certain food products, viz, unsalted meats, sausages, dressed poultry, fresh butter, fresh milk (unsterilized), fresh cheese, coming from cholera-infected localities or through such localities, if exposed to infection therein, should not be shipped. Fresh fruits and vegetables from districts where cholera prevails shall be shipped only under such sanitary supervision as will enable the inspector to certify that they have not been exposed to infection.

At domestic ports, to supplement the above regulation, it is hereby ordered that food products brought by steerage passengers or members of the crew from ports or places where cholera prevails, in violation of paragraph 27, Quarantine Regulations, whether brought in trunks, hand baggage, or on the persons of the immigrants or members of the crew, shall be removed to the quarantine station. Said food products and others, including water supplies, which in the opinion of the quar-

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antine officer may be infected, shall be destroyed or held until by careful examination it is determined that they are free from infection, and if allowed entry must be accompanied by a written certificate in each case.

R. O. BAILEY, *Acting Secretary.*

(T. D. 31739—G. A. 7242.)

Jute card waste.

1. CERTAIN WASTE PRODUCTS SPECIALLY PROVIDED FOR.

Paragraph 479 of the tariff act of 1909, and paragraph 463 of the act of 1897, provide specially for all waste products not otherwise provided for in said acts, and require the assessment of said products at the rate of 10 per cent ad valorem.

2. SAME.

Jute card waste, which is a by-product produced in the process of manufacturing jute by rejection from cards or combing machines, *Held* to be dutiable under the one or other of said paragraphs as "waste, not specially provided for," according to whether the importation was made under the tariff act of 1909 or the act of 1897, and is not free of duty under paragraph 578 of the act of 1909, or under paragraph 566 of the act of 1897, as "jute * * * not dressed or manufactured in any manner." The fact that the material itself remains jute is irrelevant.

3. SAME—NOT PAPER STOCK.

Such merchandise, being chiefly used for other purposes than manufacturing paper, is excluded from classification under either paragraph 644 of the act of 1909, or paragraph 632 of the act of 1897.

United States General Appraisers, New York, July 6, 1911.

In the matter of protests 336301, etc., of Salomon Bros. & Co. et al. against the assessment of duty by the collectors and surveyor of customs at the ports of New York, Philadelphia, Boston, Chicago, Newport News, and Cincinnati.

Before Board 3 (WAITE, SOMERVILLE, and HAY, General Appraisers; HAY, G. A., absent).

SOMERVILLE, *General Appraiser:* The importations covered by the protests in the appended schedule consist of jute card waste, properly represented by the samples marked "Exhibits 1 and 2." Some of these importations were made under the tariff of 1909 and others under the tariff act of 1897. It is expressly stipulated between counsel that the two samples referred to correctly represent each of the importations. The question involved is the same as applicable to each of the protests.

The merchandise imported under the tariff act of 1909 was all assessed for duty under paragraph 479 of said act at 10 per cent ad valorem, as "waste, not specially provided for" in said act. That imported under the tariff act of 1897 was assessed under the analogous paragraph 463 of that act, also as "waste, not specially provided for."

The protests respectively claim that the importations made under the tariff act of 1909 are free of duty either under paragraph 644 of said act as jute card waste used chiefly for paper making, or else free of duty under paragraph 578 of said act, which reads as follows:

578. Grasses and fibers: Istle or Tampico fiber, jute, jute butts, manila, sisal grass, sunn, and all other textile grasses or fibrous vegetable substances, not dressed or manufactured in any manner, and not specially provided for in this section.

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Similar claims are made as to the importations under the act of 1897, the importers specifying paragraph 632 of said act, as jute card waste fit only to be converted into paper, and paragraph 566, which is identical in language with said paragraph 578 of the act of 1909. In some of the protests other claims are made, but not insisted on.

The testimony shows unquestionably that the jute card waste under consideration is used chiefly for other purposes than paper making. In fact, there is no testimony tending to show that it is used for the manufacture of paper. The main contention relied on is that jute card waste of the kind under consideration is free of duty as "jute * * * not dressed or manufactured in any manner, and not specially provided for" in other parts of either of said tariff acts.

The illustrative samples introduced in evidence throw but little, if any, light upon the proper classification of the merchandise in question.

The local appraiser in several instances has reported this jute card waste as of the same character as that passed on by the board *In re* Hampton, G. A. 5837 (T. D. 25745), which was held to be dutiable under paragraph 463 of the tariff act of 1897 as waste not specially provided for and not free of duty under paragraph 632 of said act.

The testimony shows that jute card waste is a species of waste produced in the process of carding or combing jute, being the inferior part of the jute rejected by the combs or cards. The contention of the importers reduces itself to this proposition—that although the article in question consists of jute card waste and is a waste, it nevertheless must be considered as jute, because it is not dressed or manufactured in any manner, and therefor free of duty under one or the other of the paragraphs of the tariff acts referred to. The tariff act specially makes provision for various kinds of waste products which have been uniformly held subject to duty as waste not otherwise provided for, being generally a by-product produced in the process of manufacture. No one has ever successfully contended that these products cease to be of the same material as the merchandise from which they were produced. For example, in the Standard Varnish Works *v.* United States (59 Fed. Rep., 456), where the word "waste" as used in tariff acts is defined, waste rope and waste bagging were said to be "no new creation, but the same in substance as bagging or rope," though unfitted for the purpose for which bagging and rope are intended generally. So with old gunny bagging assessed as waste under paragraph 463 of the tariff act of 1897. Train-Smith *v.* United States (107 Fed. Rep., 261), affirming G. A. 4406 (T. D. 20960); *In re* Oberle & Henry, G. A. 7194 (T. D. 31447). It is manifest that cotton waste, which is free of duty, would not cease to be the material of cotton. So, rubber waste would continue to be rubber, and a like principle applies to all other articles known as waste.

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The contention of the importers is considered by the board to be entirely untenable.

All of the protests are overruled and the decisions of the collectors affirmed in each instance.

(T. D. 31740—G. A. 7243.)

Metal hoes.

HOES—FORGINGS—PROCESS SUBSEQUENT TO FORGING.

Grinding hoes rough forged from steel bars for the purpose of removing the burr from the edges is not an advancement "in condition by any process or operation subsequent to the forging process," within the meaning of paragraph 123, tariff act of 1909, but is incidental to the forging. Such hoes are dutiable under said paragraph 123 as "forgings" rather than as manufactures of metal under paragraph 199 of said act.

United States General Appraisers, New York, July 6, 1911.

In the matter of protest 398488 of Alfred Anderson & Co. against the assessment of duty by the collector of customs at the port of Minneapolis.

Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers; COOPER, G. A., absent).

FISCHER, *General Appraiser:* The merchandise consists of metal hoes upon which duty was assessed at 45 per cent ad valorem under the provisions of paragraph 199, tariff act of 1909, as manufactures of metal, and which are claimed dutiable at 30 per cent ad valorem under paragraph 123, as forgings of steel.

The metal hoes are first rough forged from steel bars, and then the burr left on the edge is removed by passing it over a grindstone. The said articles are not further manipulated, but it would appear that to prevent them from rusting they are dipped in oil prior to being shipped. The question at issue is whether these articles have been advanced beyond the forging process. The provision for "forgings," paragraph 123 of the act of 1909, is qualified as follows:

> But not machined, tooled, or otherwise advanced in condition by any process or operation subsequent to the forging process.

As we understand the term "forgings," so restricted, it would still apply to and include articles of the kind here in question. The metal forging has not been machined or tooled, but merely ground for the purpose of removing the burr from the edge of the hoes. The burr might be removed by a hammer and anvil, but that would greatly enhance the cost of the article, and it appears that the grindstone is the more economical means of accomplishing the result as well as one of the improved methods of removing surplus material by the forging process.

In Prosser & Son *v.* United States (T. D. 31551) the United States Court of Customs Appeals held that "the terms of extensions in paragraph 127 [act of 1897], if they mean anything, mean the inclusion

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of treatment purely incidental to the forging and not designed to advance the product beyond the forging stage." We note the following excerpts from the opinion in that case:

With the development of improved methods and high-class machinery it was found that more economical, better, and speedier results could be achieved by not trying to forge close or to remove in the forge shop surplus metal from places not readily accessible.

Rough turning or rough machining is more a substituted than an additional process and has for its aim rather the finishing of the forging than the completion of the article to be evolved from the forging.

It may be said, therefore, that rough machining or rough turning does the work of close forging and accomplishes its objects by less costly and tedious means.

A forging, as now commonly understood, may therefore be defined to be a creation of forging processes, an article of metal shaped or formed by hammering or by allied methods producing substantially the same results as hammering.

We conclude that the work performed on these metal hoes was not other than forging work; that they have not been advanced by processes other than forging, and that they are entitled to classification as "forgings" under paragraph 123.

The protest is sustained, and the decision of the collector is modified accordingly.

(T. D. 31741—G. A. 7244.)

Amberoid.

MELTED AND MOLDED AMBER.

Refuse pieces of amber melted and molded into shapes to be used for making mouthpieces for pipes and cigar holders are free of duty as amberoid under paragraph 488 of the tariff act of 1909.

United States General Appraisers, New York, July 8, 1911.

In the matter of protest 459267-35760 of M. Linkman & Co. against the assessment of duty by the collector of customs at the port of Chicago.

Before Board 3 (WAITE, SOMERVILLE, and HAY, General Appraisers).

HAY, *General Appraiser:* The merchandise which is the subject of this protest is described by the appraiser in his report to the collector as "amber pressed into shapes to be used for pipe mouthpieces" and was assessed for duty as a manufacture of amber under paragraph 462 of the tariff act of 1909. It is claimed to be free of duty under paragraph 488, which paragraph reads as follows:

Par. 488. Amber, and amberoid, unmanufactured, or crude gum, gum Kauri, and gum Copal.

The contention of the importers is that the merchandise in question is amberoid, an article specifically enumerated in this paragraph of the law. Counsel for the Government meets this contention by the argument that the merchandise in question being molded into the shape and form of mouthpieces for cigar holders and pipes is a partially manufactured article, and hence is excluded from this paragraph

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of the law. An examination of the samples introduced in evidence would seem to justify the claim of the Government were it not for the fact that we think that paragraph 488 makes express provision for the articles in question. These articles are pieces of amber in the shape and form of pipe or cigar-holder mouthpieces, it being apparently necessary only to bore a hole through them and fit them to the pipe or cigar holder. The testimony, however, shows that they are made of refuse pieces of amber, melted and molded into the shape in which they are before us, and the marks of the mold may be seen upon the samples.

"Amberoid" is apparently a word coined for the express purpose of designating articles of this character, and, while the articles in question have passed through a stage of manufacture, it is only such manufacture as is necessary to constitute *amberoid* under the meaning of this word as we gather it, not only from the testimony, but from the dictionaries. The testimony is that amberoid is pieces of amber melted and molded into shapes and forms. In the Standard Dictionary the word is spelled *ambroid*, and is defined as "A reconstructed amber made by heating and uniting by pressure fragments of amber." The earlier editions of the Century Dictionary do not contain the word at all, but in the edition of 1909 it is, under the spelling *ambroid*, defined: "A trade name for a substance made from inferior pieces of amber." Amberoid is therefore amber melted and molded, and the character of the shape or form of the mold could not change or alter its condition as amberoid. We therefore reach the conclusion that the articles in question are specifically made free of duty under paragraph 488.

The protest is sustained and the collector directed to reliquidate the entry accordingly.

(T. D. 31742—G. A. 7245.)

Hat sweats.

Pieces of leather dressed and finished, cut to size and shape, adapted for immediate insertion into men's hats as hat sweats, are completed manufactured articles and not dutiable under paragraph 451, tariff act of 1909, as "leather cut into * * * forms, suitable for conversion into manufactured articles." *Held*, there being no *eo nomine* provision for hat sweats in the act of 1909, that such articles are dutiable under paragraph 452 of said act as manufactures of leather.

United States General Appraisers, New York, July 8, 1911.

In the matter of protests 493836, etc., of M. J. Corbett & Co. et al. against the assessment of duty by the collector of customs at the port of New York.

Before Board 1 (SHARRETTS, MCCLELLAND, and CHAMBERLAIN, General Appraisers).

MCCLELLAND, *General Appraiser:* The appraiser in his special report on these protests states of the merchandise that—

It is made from hat-sweat leather that has been dressed and finished, being cut to the size and shape so as to adapt it for immediate use in the insertion of men's hats—

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and duty was assessed at the rate of 40 per cent ad valorem under the provisions of paragraph 452 of the tariff act of 1909. The following alternative claims for rates of duty other than that assessed are made in the protests:

(1) Five per cent as band leather under paragraph 451.

(2) Fifteen per cent as sheepskins dressed and finished under paragraph 451.

(3) Five per cent as "skins for morocco" under paragraph 451.

(4) Seven and one-half per cent under paragraph 450.

(5) The rates claimed above and in addition thereto 10 per cent under the proviso in said paragraph 451.

We think it may be said that in the record the description of the merchandise above quoted is accurate and is not disputed, except in so far as it describes the leather as being adapted "for immediate use in the insertion of men's hats."

The issue is whether the pieces of leather thus described are in fact hat sweats ready for use. If so, duty was unquestionably properly assessed, for, since there is no *eo nomine* provision in the tariff act for hat sweats, it would follow that if thus complete these sweats would be classifiable under the general provision for manufactures of leather.

It is not seriously disputed, if at all, that these leathers are cut to designs that adapt them only for use as hat sweats. In fact, it is shown beyond question that they are adapted to no other use.

The contention of the importers is that the cutting into forms, which has adapted these leathers for use as hat sweats, makes them classifiable under the proviso in paragraph 451 for "leather cut into * * * forms, suitable for conversion into manufactured articles," but this contention can not prevail if it be the fact that, in their present condition, these pieces of leather are actually ready for use, and such as are in a general way used as hat sweats.

It is evident that hat sweats are used which show varied styles of finish, but the testimony in this case shows that a perfectly plain hat sweat is very generally used in the manufacture of the cheaper grade of hats.

In Abstract 24415 (T. D. 31146) the board passed upon a somewhat similar question, but involving leathers of a higher degree of finish than those in the case at bar. In that case, among other things, we said:

> It is not disputed that the strips of leather in question are known in trade and bought and sold under the name of "hat sweats." The samples clearly indicate that they are specially prepared for use as such. They are in condition ready for insertion into hats, subject only to adjustment as to length. The mere fact that for high-grade hats such leathers may be embellished otherwise than are the goods in question does not alter the fact that these hat sweats are manufactured articles having a recognized name other than the material from which they are made and a special use.

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It is in evidence here that as large a proportion as 50 per cent of all the hat sweats used in the making of hats in the United States are no further advanced than those under consideration, and we think that the evidence shows a clear preponderance, both in character and weight, in support of the collector's classification.

We therefore find as a fact that the leathers in question are finished hat sweats adaptable to use as such in the condition as imported, and we hold them to be subject to duty as assessed.

(T. D. 31743—G. A. 7246.)

Kromoline.

1. KROMOLINE—GREASE—FISH OIL.

The article dealt in under the trade name of "kromoline," being a mixture of mineral oil, fish or vegetable oils, and other substances, is not an alizarin assistant, an acid, or any one of the soluble greases provided for in paragraph 32, tariff act of 1909. Nor is such a mixture a fish oil and therefore within the exception in paragraph 580 of said act.

2. SAME—"FIT ONLY FOR SUCH USE."

To prove the mere fact that kromoline might be used for purposes other than stuffing or dressing leather is not sufficient to establish that practically it is fitted for any other use. "Fit only for such use" must be given a practical meaning.

3. SAME—GREASE—OIL.

Kromoline is a grease or oil "commonly used * * * for stuffing or dressing leather, and * * * fit only for such use," and is entitled to free entry under paragraph 580, tariff act of 1909.

United States General Appraisers, New York, July 8, 1911.

In the matter of protests 523796, etc., of I. Levinstein & Co. against the assessment of duty by the collector of customs of the port of Boston.

Before Board 1 (SHARRETTS, MCCLELLAND, and CHAMBERLAIN, General Appraisers).

MCCLELLAND, *General Appraiser:* The issue in this case is whether an article sold under the trade name of "kromoline" shall pay duty at the rate of 30 per cent ad valorem under the provision in paragraph 32 of the tariff act of 1909 for "all soluble greases used in the processes of softening, dyeing, or finishing, not specially provided for in this section," or be admitted to free entry under the provisions of paragraph 580, which reads—

Grease, fats, vegetable tallow, and oils (excepting fish oils), such as are commonly used in soap making or in wire drawing, or for stuffing or dressing leather, and which are fit only for such uses, and not specially provided for in this section—

or, alternatively, pay duty at one of the rates claimed in the protest other than that assessed.

The issue has been exhaustively tried out, and the record evidence is consequently voluminous.

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Affirmatively, the protestant has sought to establish that the merchandise is a grease the only practical use of which is in the stuffing and dressing of leather, and it may in fact be said that no effort was made to sustain any of the claims made in the protests except that for free entry under paragraph 580, *supra*. As against this effort the Government has endeavored to establish two facts, viz, 1, that kromoline is a fish oil; 2, that it is adapted to uses other than those mentioned in paragraph 580.

It follows, of course, that if the Government has succeeded in proving either one or both of these facts the protestant company can not succeed, inasmuch as fish oils are exempted from the provisions of paragraph 580, and free entry may only be extended to those commodities which are commonly used and fitted only for one of the uses therein specified.

Kromoline is shown to be a comparatively new article. It was unknown to the commerce of the United States at the time of the enactment of the present tariff law, August 5, 1909. Apparently it is, in part at least, the product of a secret process of manufacture, but it is disclosed in the record that the basic material thereof is oil recovered from leather by a system of degreasing through the use of a naphtha solvent. Such degreasing is a necessary process in the making of certain leathers, as, for instance, patent leathers. The origin of such recovered oil is undeterminable for the reason that upon its introduction into the leather it undergoes a chemical change, and for the further reason that in the process of manufacture of kromoline it undergoes another such change.

From statements of analyses of kromoline appearing in evidence it is shown that its iodine value is from 70 to 71, its saponification value 88, and its specific gravity from 0.95 to 0.96, and that it is miscible in water, while like statements of analyses of fish oils show the iodine value thereof to be 130 to 160, saponification value 176 to 192, specific gravity 0.91 to 0.93, and not miscible in water.

Among other differences between kromoline and fish oils shown in the record are that fish oils are actually used for the following purposes, *i. e.*, making of paints and varnishes, tempering of steel, making of soft soap and tanning of leather, while kromoline can not be practically put to either of these uses. Fish oils actually mix with linseed oil in paint making, but kromoline can not be *permanently* so mixed.

Discussion of fish oils hardly seems warranted, however, for it at once appears that the merchandise is neither a particular kind of fish oil nor a combination of fish oils. The purpose of the Government to bring this article within the exception in paragraph 580, *supra*, may be said to be "far-fetched" indeed, for the very most that can be said of it is that it contains a fraction of oil of doubtful origin that may or

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may not have been before sulphonation a fish oil. Dr. Lane, the Government chemist, describes kromoline as "a mixture of several fatty acids, petroleum and oxidized fatty acids, sodium salts," and Fog, chemist, states his analysis of it to be: "Moisture, 16.35; sulphonated saponified fatty acids, 8; sulphonated and unsaponified acids, 24.5; unaltered oil (mineral oil), 24.09; fatty acids of unaltered oil, 20.1; altogether 45 per cent; ash, 2.88; specific gravity, 0.966."

The iodine value of the unaltered oil found in kromoline is shown by Dr. Lane to be 118.5 and the saponification value 189.3, while, as already indicated, the iodine value of kromoline is 70 to 71, and its saponification value 88.

Enough, we think, is pointed out to clearly demonstrate that the article before us is neither scientifically nor practically a fish oil.

One of the scientific witnesses (Weber), called on behalf of the Government, who has been engaged in research work, was asked:

Q. Now, as a chemist, are you prepared to state here under oath that you would recommend the acceptance by any client of yours of the product which you have analyzed as a delivery of fish oil?

To which he replied:

No, I would not.

This, we think, disposes of one phase of the Government's contention, viz, that kromoline is a fish oil, and thus excepted from paragraph 580, *supra*.

The issue as it remains must be determined in large measure, if not altogether, by the uses to which the commodity may be practically applied.

The evidence on behalf of protestant would be ample and conclusive as against the mere presumption of regularity to which the collector's classification is entitled but for the fact that the Government has diligently and with zeal sought at unusual length to sustain the collector's action, and in so doing, on the question of use and adaptability, we think the theory pursued as mistaken as the effort to show that such a mixture as kromoline is shown to be is still a fish oil.

The mistake as to use may be said to be threefold:

(*a*) As applied to its use with extracts in the processes of retanning.

(*b*) As applied to its use on sole leather which it is said is never stuffed, and that its use in finishing is a process separate and distinct from "stuffing or dressing."

(*c*) In the effort to prove through accounts of experimental tests that it is adapted to other uses than stuffing or dressing leather.

While the Government has shown beyond question that kromoline is used in retanning processes with tanning extracts, there is utter failure to establish that in such use kromoline serves to any degree as a tanner or as an aid to make effective the tanning extracts with which it is used, other than to drive them into the leather.

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No attempt was made to show that kromoline has been used in what, for want of a better description, may be called the original tanning of leather, and since it has within the past 18 months been used extensively by leather manufacturers, this would seem strange if it be that it has tanning properties. The fact gleaned from the evidence is that it is not used until after the leather has been actually tanned, or, in other words, until the hide has been so far tanned as to give it the trade name of "rough leather," and when so used with extracts on the rough leather its purpose may best be illustrated by the testimony of the witness Harry Cox, a practical tanner, as follows (pp. 116–117, stenographic record):

Q. When kromoline is used in conjunction with quebracho, as you have stated, in retanning, in addition to the penetrating qualities that it gives quebracho, does it itself, as an oil, enter into the fabric or, rather, the body of the leather?—A. Yes. In our own case, for instance, when we retan with quebracho we would retan a definite percentage of quebracho and use a definite percentage of kromoline, for instance, and then when we stuff that leather we allow for that kromoline, because we had that oil already in there.

Q. And when it is used in conjunction the kromoline goes into the leather, and the leather has to that extent been already stuffed?—A. Certainly.

Q. And requires that much less stuffing in the final?—A. Yes; exactly.

The Government lays much stress upon the fact that inasmuch as kromoline is applied in certain of the finishing processes of sole leather, which it is claimed is never stuffed, it is thereby demonstrated that it has thus a use which is neither "stuffing" or "dressing" leather, but we think that this is putting altogether too narrow a construction on the terms "stuffing" and "dressing." Some of the witnesses went so far as to say that they never heard of the term "dressing" as applied to leather, but the witness Horton testified (p. 345, stenographic record):

Q. Please describe the finishing process for sole leather.—A. The leather is taken from the drum, bleached, put in an oil wheel and oiled, or oiled by hand—sometimes one way and sometimes the other way. It is then sent to the loft and suspended on sticks and dried; after it is dried it is taken down and dipped in water for tempering purposes and is tempered from one to two days in a closed room. It is then taken out and the grain sponged very lightly with water—cold water—followed by a slight coating of oil. It is then sent to the machines and subjected to heavy pressure, finishing it.

General Appraiser McClelland. What is the purpose of oiling the leather in the two instances you have mentioned there?—A. For the purpose of toughening the grain and to have it dry without oxidation.

And the witness Guelick (p. 433), on the meaning of the term "dressing," had this to say:

Q. What does dressing include—what process does dressing include?—A. Retannage, bleaching, stuffing or fat liquoring, dyeing, finishing, and various others.

Q. Do you mean that stuffing, the terms "stuffing" and "dressing" are synonymous and interchangeable?—A. The term "dressing" is a general name which covers the various steps of finishing, I should say, and stuffing is merely one of those steps.

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Q. You draw no distinction between dressing and stuffing?—A. I said that dressing covers all stages of the leather from the rough state on to the finished state—on to finished product. That includes retannage, stuffing, dyeing, finishing, oiling, and a dozen other steps which might enter into different kinds of leather.

The Government, as we have said, seeks to put altogether too narrow a construction on the words "stuffing or dressing" as used in the paragraph. It is our view that the processes wherein it has been shown that kromoline has been applied to leather may with equal propriety be called either "dressing" or "finishing."

The Government has also failed to prove generally that kromoline is practically adapted to any uses other than stuffing or dressing leather.

We have been unable to overlook the fact that much of the testimony offered by the Government as to its adaptability to other uses did not come from wholly disinterested witnesses and that there was more than the usual desire to simply testify to facts regardless of the outcome could not fail to be apparent to one observing the manner and hearing the testimony of the witnesses. One witness, who, in addition to his own statement, offered the testimony of two chemists employed by his firm, frankly acknowledged that he was interested because kromoline had come into competition with and seriously affected the sales of three commodities dealt in by his said firm. Another witness was a former employee of the protesting company, whose relations therewith were severed under circumstances which left unmistakable bitterness, and his animus was so manifest that a stranger to the record could not fail to discover it on reading his evidence. He had sold very large quantities of kromoline throughout the country. In some instances had he sold single-barrel lots for uses, as he claimed, other than stuffing or dressing leather, but, strange as it may seem, if his statements of such sales were reliable, not a single purchaser for such uses was called to testify, nor was any explanation made of the failure so to do.

A witness was called to testify that he had experimented with kromoline and found it suitable for use as a "cutting oil." It could, according to this witness, be so used alone or in a mixture with other oils, but notwithstanding that he had known kromoline as a commercial commodity for about a year and a half, he had never known it to be used as cutting oil in a practical way. His interest in the outcome of this issue may be explained by the following, from his testimony (p. 390):

Q. Does kromoline compete with any article that you have?—A. It does.
Q. What product?—A. Sulphonated fish oils.
Q. Competes heavily, does it not?—A. Yes.

There has been failure also to prove that kromoline is adapted to practical use as an alizarin assistant. On the contrary, it is affirmatively shown that by reason of imparting color, and its effect in

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producing a harsh, gummy surface on the cloth, it is utterly unfit for use as an alizarin assistant.

The mere fact that an article might be used for a given purpose does not in itself prove its adaptability practically for such use generally.

In Oil Seeds Pressing Co. *v.* United States (114 Fed. Rep., 793) United States District Judge Townsend, passing upon the words "fit only for such use" as applied to olive oil in the tariff act of 1897, said:

> The word "fit" seems to be equivalent to "suitable"—the actual, practical, and commercial suitableness of the article for the purpose designated. (See also G. A. 4459, T. D. 21288.)

We are, for the foregoing reasons, forced to conclude from the record that "kromoline," so called, is a grease or oil (not a fish oil) commonly used for stuffing or dressing leather, and fit only for such use. The protest claim for free entry is therefore sustained.

Decision of the collector reversed.

(T. D. 31744.)

Abstracts of decisions of the Board of General Appraisers.

Board 1—Sharretts, McClelland, and Chamberlain. *Board 2*—Fischer, Howell, and Cooper. *Board 3*—Waite, Somerville, and Hay.

BEFORE BOARD 1, JULY 6, 1911.

No. 26012.—MIRRORS IN CELLULOID FRAMES.—Protests 443312, etc., of George W. Parker Art Co. (Minneapolis).

SHARRETTS, *General Appraiser:* The merchandise in dispute is mirrors not exceeding in size 144 square inches, set in circular or oblong frames and folding cases composed of celluloid. The appraiser reports that celluloid is of more value than the mirrors in the completed articles; hence duty was assessed on the merchandise by the collector as entireties, at the rate of 65 cents per pound and 30 per cent ad valorem under paragraph 17 of the tariff act of 1909. No evidence was submitted in behalf of the importers to rebut the correctness of the classifying officer's statement relative to the component material of chief value. We must, therefore, accept that fact as established.

We do not regard the question whether the celluloid frames are or are not of more value than the mirrors as of any consequence in the determination of the issue presented in the case at bar. The question involved is not a new one. This board has held in many cases that the provision for mirrors in frames and cases is more specific than that for articles wholly or partly finished, composed in chief value of celluloid, and the law as thus interpreted has been followed at all ports, with the consent of the Treasury Department, for upward of 10 years. See G. A. 4843 (T. D. 22744) and T. D. 27296 (Abstract 10922). Many other citations might be given, but it is so well settled that mirrors in celluloid frames or cases are dutiable under paragraph 109 of the present act, which is an exact reproduction of paragraph 112 of the act of 1897, we do not deem it necessary to discuss the case further. The protest is sustained and the decision of the collector reversed.

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No. 26013.—Feather Articles.—Protest 407307 of Judkins & McCormick Co. (New York). Opinion by McClelland, G. A.

Feather articles classified as "feathers" under paragraph 425, tariff act of 1897, were held dutiable as manufactures in part of metal (par. 193), as claimed by the importers.

No. 26014.—Bleachers' Blue.—Protests 262096, etc., of A. De Ronde & Co. (New York).

Bleachers' blue in liquid form, which was classified as "blues" either under paragraph 45, tariff act of 1897, or paragraph 43, act of 1909, was claimed to be dutiable as an unenumerated manufactured article (sec. 6, act of 1897, or par. 480, act of 1909).

McClelland, *General Appraiser:* The United States Court of Customs Appeals in the case of De Ronde & Co. *v.* United States (T. D. 31112) has held that merchandise similar to that in question is dutiable at the rate of 20 per cent ad valorem as an unenumerated manufactured article under section 6 of the tariff act of 1897. Following that decision, the protest claims for duty at 20 per cent ad valorem under said section 6 under the act of 1897, *supra*, or paragraph 480 of the act of 1909, *supra*, are sustained as to the merchandise described on the invoices either as "Bleachers' blue" or as "Edge's tint."

No. 26015.—Protests Overruled.—Protests 411275, etc., of H. F. Livermore Co. et al. (Boston), protest 500310-37277 of Bernard, Judae & Co., protest 489464-36594 of A. & F. Pears, protests 488947-36000 of Sears, Roebuck & Co., and protests 338090-28300, etc., and 422577-33054, etc., of G. W. Sheldon & Co. et al. (Chicago), protest 497513 of T. J. Woodside (El Paso), protests 417510, etc., of Gross, Engel & Co. et al., protests 468776, etc., of A. Hauptman et al., protests 347865, etc., of C. D. Jackson & Co. et al., protests 439253, etc., of J. M. Martin et al., protests 473020 and 473025 of William Scharrath, protests 464684, etc., of Unkart, Travis & Co., and protests 402956, etc., of A. A. Zeimer (New York), protests 462098, etc., of Garringer & Schwartz et al. (Plattsburg), and protest 460306 of T. Nagashima (San Francisco). Opinions by McClelland, G. A.

Protests overruled for want of merit.

Before Board 3, July 6, 1911.

No. 26016.—Protests Overruled.—Protests 473151, etc., of Chong Lung et al. (New York), and protests 481337, etc., of Gom Hong Co. et al. (Port Townsend). Opinions by Waite, G. A.

Protests overruled for want of merit.

No. 26017.—Rotten Peanuts—Damage.—Protest 469518 of A. W. Field Co. (New York).

Somerville, *General Appraiser:* The importation consists of shelled peanuts, which were assessed for duty under paragraph 282 of the tariff act of 1909 at 1 cent per pound on the net weight of the merchandise, which was ascertained by the United States weigher to be 38,820 pounds. The importers claim that a certain portion of the merchandise at the time of arrival in this country was rotten, unmerchantable, and worthless. The collector declined to make any deduction of duties on the ground that the importers had failed to comply with the regulations of the Secretary of the Treasury published in T. D. 30023, made pursuant to subsection 22 of section 28 of said act. The importers claim the regulations in question have no application to this merchandise, on the ground that the peanuts are not a "perishable article" within the meaning of said regulations.

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It is shown by the evidence that peanuts are usually granted warehouse privileges as a nonperishable species of merchandise, and that they will keep two, three, or four years in dry places. It is further shown that the sound portion of this importation at the time of arrival amounted to 24,604 pounds.

Following the board decision *In re* Fried & Son, G. A. 7228 (T. D. 31650), we find that the importers are entitled to a deduction of duty on 14,216 pounds, being the amount of said merchandise found to be worthless and unmerchantable at the time of arrival. The protest to this extent is sustained and the collector's decision reversed, with instructions to reliquidate the entry accordingly.

No. 26018.—Gauge of Olive Oil in Tins.—Protests 257271, etc., of Mitchell, Fletcher & Co. et al. (Philadelphia). Opinion by Somerville, G. A.

Protests sustained as to gauge of olive oil in tins. G. A. 6575 (T. D. 28072) followed.

No. 26019.—Protests Overruled.—Protests 436882, etc., of Robert B. Ways (Baltimore), protests 461694, etc., of W. N. Proctor Co. (Boston), protests 172840–20137, etc., of Wakem & McLaughlin (Chicago), protests 451159, etc , of Wilfred Schade & Co. (Newport News), protest 494910 of C. F. Hubbs & Co., and protests 474390, etc., of J. C. Hunt et al. (New York), protest 474551 of O. G. Hempstead & Son, protests 447862, etc., of A. H. Post & Co. et al., and protests 471205, etc., of F. B. Vandegrift & Co. (Philadelphia), protests 443728, etc., of W. White (Port Huron), and protest 456845 of W. S. McNamara (San Francisco). Opinions by Somerville, G. A.

Protests overruled for want of merit.

No. 26020.—Moss Wreaths.—Protest 450168 of P. H. Petry Co. (New York). Opinion by Hay, G. A.

Wreaths made of natural rock moss, dyed and prepared, which were classified as nonenumerated manufactured articles under paragraph 480, tariff act of 1909, were held dutiable as "moss * * * manufactured or dyed" (par. 78), as claimed by the importers. Abstract 23535 (T. D. 30710) followed.

Before Board 1, July 8, 1911.

No. 26021.—Protests Overruled.—Protests 477847, etc., of B. Altman & Co. et al., protests 473772, etc., of American Bead Co. et al., protests 478543, etc., of William A. Brown & Co. et al., protests 476222, etc., of Stern Bros. et al., and protests 477800, etc., of G. M. Thurnauer & Bro. et al. (New York). Opinions by Sharretts, G. A.

Protests overruled for want of merit.

No. 26022.—Willow Baskets—Hampers.—Protest 451443 of Robert B. Ways (Baltimore), protests 489465–36733, etc., of Raedlein Basket Co. et al. (Chicago), protest 470008 of Hawley & Letzerich (Galveston), protests 463061–3670, 463062–3674, and 476653–3695 of George W. Rueff (New Orleans), protest 481054 of G. M. Thurnauer & Bro. (New York), and protests 409506, etc., of William Larzelere & Co. (Philadelphia). Opinions by McClelland, G. A.

Baskets and hampers of willow, classified as manufactures of willow or willow furniture, under paragraph 212, tariff act of 1909, were held dutiable as "baskets * * * of * * * wood" (par. 214), as claimed by the importers. Brody *v.* United States (T. D. 31573) and Krauss *v.* United States (T. D. 31574) followed.

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No. 26023.—Split-Bamboo Baskets.—Protest 379031 of Kwong Yuen Shing (New York). Opinion by McClelland, G. A.

Baskets of split bamboo, which were classified as manufactures of wood under paragraph 208, tariff act of 1897, were held dutiable as manufactures of chip (par. 449). Protest sustained on the authority of Tuska *v.* United States (T. D. 31547).

No. 26024.—Shida Baskets.—Protests 459238–34876, etc., of Butler Bros. (Chicago).

McClelland, *General Appraiser:* The special reports of the appraiser on these protests state that the merchandise consists of shida baskets and colored wood baskets.

It would appear that the shida baskets are dutiable at 45 per cent ad valorem under paragraph 212 by virtue of the similitude clause of paragraph 481, tariff act of 1909, in harmony with the decision of the board in Abstract 19175 (T. D. 29099), and that the colored wood baskets are dutiable at 40 per cent ad valorem under paragraph 214 of said act (Thomsen *v.* United States, T. D. 31590); and it further appearing that duty was assessed on the merchandise at the respective rates above named, the protests are overruled.

No. 26025.—Bark Baskets.—Protest 482176 of Decorative Plant Co. (New York). Opinion by McClelland, G. A.

Fern baskets or boxes made of bark and classified as manufactures of wood under paragraph 208, tariff act of 1897, were held dutiable as unenumerated manufactured articles (sec. 6), as claimed by the importers. Abstract 18580 (T. D. 28910) followed.

No. 26026.—Silk-Lined Baskets.—Protest 440118 of Stern Bros. (New York). Opinion by McClelland, G. A.

Protest sustained as to silk-lined baskets. G. A. 7221 (T. D. 31587) followed.

No. 26027.—Fur Waste.—Protest 429805, etc., of Hatters' Fur Exchange (New York). Opinion by McClelland, G. A.

Protests sustained as to fur waste on the authority of United States *v.* Hatters' Fur Exchange (T. D. 31237).

No. 26028.—Protests Overruled.—Protests 439451–33755, etc., of Butler Bros. et al. (Chicago), protests 402215, etc., of Jacob Adler & Co. et al., and protests 431587, etc., of Morris Hess & Co. (New York), and protests 444724, etc., of O. G. Hempstead & Son (Philadelphia). Opinions by McClelland, G. A.

Protests overruled for want of merit.

No. 26029.—Prismatic Glasses.—Protests 368438, etc., of Ashcroft Manufacturing Co. (Bridgeport). Opinion by Chamberlain, G. A.

Prismatic gauge glasses, classified as articles of ground glass under paragraph 100, tariff act of 1897, were held dutiable as "strips of glass * * * ground * * * to a * * * prismatic form" (par. 110), as claimed by the importers. United States *v.* Ashcroft (176 Fed. Rep., 736; T. D. 30384) followed.

No. 26030.—Protests Overruled.—Protest 497550 of T. P. Joughin & Co. (Galveston). Opinion by Chamberlain, G. A.

Protest overruled for want of merit.

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BEFORE BOARD 2, JULY 8, 1911.

No. 26031.—WRITING SETS.—Protest 401377 of Thomas Meadows & Co. (New York). Opinion by Fischer, G. A.

Sets made up of an envelope rack, a small stamp box, a blotter tablet and a blotter, which were classified as fancy paper boxes under paragraph 405, tariff act of 1897, were held dutiable as manufactures of paper (par. 407), as claimed by the importers.

No. 26032.—METAL-THREAD EMBROIDERIES.—Protest 441436 of Schefer, Schramm & Vogel (New York).

Merchandise classified as metal-thread embroideries under paragraph 179, tariff act of 1909, was claimed to be in chief value of cotton and, therefore, dutiable as cotton embroideries (par. 349).

FISCHER, *General Appraiser:* The samples admitted in evidence were submitted to the textile analyst at the port of New York, and it appears from the results of his analyses that the embroideries are in chief value of cotton. Though this is true, it is just as evident that the goods are embroidered with metal threads. Whether the embroideries are or are not in chief value of metal threads is of minor importance. If in chief value of metal threads paragraph 179 applies directly, and if the embroidered fabric is in chief value of cotton and the material of which the embroidery is composed is metal thread, it falls within paragraph 179 by virtue of the last proviso to paragraph 349. Shoninger case (T. D. 31661). The protest is overruled and the assessment in question affirmed.

No. 26033.—WATCH DIALS—PARTS OF WATCHES.—Protest 449430 of Leon Hirsch (New York). Opinion by Fischer, G. A.

Metal watch dials, classified as manufactures of metal under paragraph 199, tariff act of 1909, were held dutiable as "parts of watches" (par. 192), as claimed by the importer.

No. 26034.—SUPERCALENDERED AND EMBOSSED GREASE-PROOF PAPER.—Protests 482623, etc., of Japan Paper Co. et al. (New York). Opinion by Fischer, G. A.

Protests sustained as to supercalendered and embossed grease-proof paper. G. A. 7136 (T. D. 31133) followed.

No. 26035.—ROUGH-TRIMMED MICA.—Protests 500054, etc., of A. O. Schoonmaker (New York). Opinion by Fischer, G. A.

Protests sustained as to rough-trimmed mica on the authority of United States *v.* Myers (T. D. 31301).

No. 26036.—PUBLICATIONS FOR GRATUITOUS CIRCULATION.—Protest 500411 of E. H. Burr (New York). Opinion by Fischer, G. A.

Protest sustained as to publications for gratuitous private circulation. Abstract 24598 (T. D. 31207) followed.

No. 26037.—PARTS OF STEAM ENGINE—WASTE—JUNK.—Protest 424207 of L. M. Hutchinson (Los Angeles).

FISCHER, *General Appraiser:* The merchandise is invoiced as locomotive parts, 58 pieces in number, and was assessed with duty at 30 per cent ad valorem under paragraph 197, tariff act of 1909, as "steam engines." The protest is worded as follows;

The merchandise in question should not have been classified under paragraph 197 and assessed at 30 per cent, but should have been classified as junk under paragraph 600, tariff law of August 5, 1909; second, or at 10 per cent under paragraph 479 as waste n. s. p. f.

The proof offered would show that during transfer of the merchandise to the ship certain parts of the locomotive, or steam engine, were lost. The saved parts are said

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to be the wheels, shafts, and cab, and it is evident to us that such articles are not classifiable as junk or waste. The issue before us does not involve any claim as to short shipment, and even were that raised and proof offered as to the exact shortage it would then no doubt be necessary to classify the machinery that did arrive under paragraph 199 at 45 per cent ad valorem. On the record before us we are satisfied that the imported articles were not in such damaged condition as to be recognized either as junk or as waste. The protest is overruled.

No. 26038.—Muck Bars.—Protest 476287 of William H. Masson (Baltimore). Opinion by Fischer, G. A.

Protest sustained as to muck bars made by the charcoal process. G. A. 7205 (T. D. 31494) followed.

No. 26039.—Printed Matter—Christmas Letters.—Protest 487578-36137 of Sears, Roebuck & Co. (Chicago). Opinion by Fischer, G. A.

Printed paper folders to be used as letters in sending Christmas greetings, which were classified as "paper * * * cut * * * into designs or shapes * * * printed" under paragraph 415, tariff act of 1909, were held dutiable as printed matter (par. 416). Abstract 24233 (T. D. 31070) followed. Protest sustained.

No. 26040.—Protests Overruled.—Protests 492849-34976, etc., of American Shipping Co., protest 488602-36571 of Butler Bros., and protests 489772-35640 of Charles D. Stone & Co. (Chicago), protests 504637, etc., of Tamm & Co. (New York), protest 445989, of Alexander Murphy & Co. (Philadelphia), protest 462101 of F. W. Myers & Co. (Plattsburg), and protests 468315, etc., of W. White (Port Huron). Opinions by Fischer, G. A.

Protests overruled for want of merit.

Before Board 3, July 8, 1911.

No. 26041.—Frozen Eggs in Tins.—Protests 482718, etc., of Stone & Downer Co. et al. (Boston).

Waite, *General Appraiser:* The merchandise is frozen eggs, the eggs having been broken and the whites and yolks mixed and frozen, and in such condition imported in sealed tins. Duty was assessed thereon under paragraph 256, tariff act of 1909, at the rate of 5 cents per dozen on the basis of 11 eggs to the pound. Various contentions are made in the protests. The assessment of this sort of goods as herein made has been approved by the United States Court of Customs Appeals, passing upon the identical issue in the case of Horsfield *v.* United States (T. D. 31186), which decision affirmed the holding of the board in Abstract 23479 (T. D. 30691). Following this authority we overrule the protests.

No. 26042.—Protests Overruled.—Protest 478822 of American Express Co., and protests 231426, etc., of James A. Hayes & Co. et al. (Boston), protest 454657 of American Express Co., and protests 385091, etc., of T. K. Malouf & Co. et al. (New York), protest 462120 of M. Furuya & Co., and protests 460273, etc., of S. P. Lockwood et al. (Portland, Oreg.), protest 422917 of Wo Chong Co., and protest 470019 of John Vittucci Co. (Port Townsend), and protests 475193, etc., of Chong Lee & Co. et al. (San Francisco). Opinions by Waite, G. A.

Protests overruled for want of merit.

No. 26043.—Protests Overruled.—Protests 483234 of Stone & Downer Co. (Boston), protest 483252-36564 of Butler Bros. (Chicago), protest 445090 of Wilfred Shade & Co. (Newport News). and protest 474883 of Bailey, Green & Elger, and protest 480706 of M. Michaelis & Son (New York). Opinions by Somerville, G. A.

Protests overruled for want of merit.

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(T. D. 31745.)

Brunswick, Ga., constituted an immediate-transportation port.

Privileges of the seventh section of the act of June 10, 1880, restored to the port of Brunswick, Ga.

TREASURY DEPARTMENT, *July 11, 1911.*

SIR: Referring to previous correspondence, and particularly to your letter of May 30, 1911, concerning the proposed restoration to Brunswick, Ga., of the privileges of the seventh section of the act approved June 10, 1880, governing the immediate transportation of dutiable goods without appraisement, which privileges were withheld from said port under the authority contained in the proviso to the section of the act cited, there being no officers at the port for the appraisement of merchandise, I have to inform you that as it now appears that importations of dutiable goods at said port are increasing, that officers competent to appraise merchandise are stationed there, and that no additional expense will be involved by the restoration of the privileges referred to, goods consigned to Brunswick, Ga., under the act of June 10, 1880, herein referred to, may be forwarded to said port as prescribed in said act.

Respectfully, JAMES F. CURTIS,
(87769.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *Brunswick, Ga.*

(T. D. 31746.)

Bagging for cotton.

When collectors of customs are in doubt as to element of chief value of bagging for cotton, a deposit of estimated duties at 45 per cent ad valorem should be required.

TREASURY DEPARTMENT, *July 12, 1911.*

SIR: Referring to the department's letter of the 14th ultimo (T. D. 31688), in regard to the classification of bagging for cotton composed of jute rejections, jute waste, or other fibers of jute origin, I have to advise you that, if bagging for cotton is imported through your port and you are in doubt as to whether the element of chief value thereof is jute within the meaning of the said decision, you should require a deposit of estimated duties at the rate of 45 per cent ad valorem, the rate provided by paragraph 358 of the tariff act, pending the result of the analysis.

Respectfully, JAMES F. CURTIS,
(67565.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New Orleans, La.*

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(T. D. 31747.)

Drawback on condensed milk.

Drawback on condensed milk manufactured by Libby, McNeill & Libby, of Chicago, Ill., with the use of imported sugar—T. D. 28903 of March 30, 1908, T. D. 29780 of May 25, 1909, and T. D. 29985 of September 7, 1909, revoked.

TREASURY DEPARTMENT, *July 12, 1911.*

SIR: Drawback is hereby allowed under section 25 of the tariff act of August 5, 1909, on the exportation of condensed milk manufactured by Libby, McNeill & Libby, of Chicago, Ill., in part with the use of imported sugar.

The quantity of imported sugar which may be taken as the basis for the allowance of drawback may equal that declared in the drawback entry, after official verification of exported quantities and chemical analysis, provided the total allowance shall not exceed 16.66 pounds of sugar for each case of forty-eight 11½-ounce cans, 18 pounds of sugar for each case of forty-eight 14-ounce cans, 19⅛ pounds of sugar for each case of forty-eight 15-ounce cans, and 20.6 pounds of sugar for each case of forty-eight 16-ounce cans.

The manufacturer's sworn statements dated February 17, 1908, and April 24, 1909, are now on file at your port, and their statement dated June 28, 1911, is inclosed herewith for filing in your office.

T. D. 28903 of March 30, 1908, T. D. 29780 of May 25, 1909, and T. D. 29985 of September 7, 1909, are hereby revoked.

Respectfully, JAMES F. CURTIS,
(50632.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Chicago, Ill.*

(T. D. 31748.)

Parcels post conventions with Haiti and Brazil.

TREASURY DEPARTMENT, *July 12, 1911.*

To officers of the customs and others concerned:

The department is advised by the Postmaster General of the conclusion of parcels post conventions between the United States and the Republic of Haiti and between the United States of America and the United States of Brazil, the former of which became operative May 1, 1911, and the latter May 29, 1911.

The provisions of Chapter VIII of the Customs Regulations of 1908, T. D. 29826 of June 9, 1909, and T. D. 29881 of June 29, 1909, apply to both conventions, the limit of weight being 11 pounds, and of dimensions the same as in article 775 of the Customs Regulations. There is no limitation as to value in either convention.

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Parcels from Haiti containing prohibited importations and parcels which do not conform to the conditions as to weight and size will not be returned to the country of origin, but will be disposed of, without recourse, in accordance with the customs laws and regulations.

Under the convention with Brazil, unsealed parcels may contain, in sealed receptacles, articles which can not be safely transmitted in unsealed receptacles, provided the contents of the closed receptacles are plainly visible or are precisely stated on the covers of the closed receptacles and that the package is so wrapped that the outer cover can be easily removed.

JAMES F. CURTIS, *Assistant Secretary.*

(T. D. 31749.)

Dogs.

Dogs imported from North American countries are not subject to inspection by the Department of Agriculture.

TREASURY DEPARTMENT, *July 13, 1911.*

SIR: Referring to T. D. 31515 of April 19, 1911, the Secretary of Agriculture advises the department that dogs imported from North American countries are not subject to inspection by his department. You will be governed accordingly.

Respectfully, JAMES F. CURTIS,
(88619.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *Buffalo, N. Y.*

(T. D. 31750.)

Mousseline bands.

Appeal directed from decision of the Board of United States General Appraisers of May 8, 1911, G. A. 7217 (T. D. 31565), involving the classification of certain narrow widths of silk chiffon.

TREASURY DEPARTMENT, *July 13, 1911.*

SIR: The department is in receipt of your letter of the 23d ultimo, inviting attention to the decision of the Board of United States General Appraisers of May 8, 1911, G. A. 7217 (T. D. 31565), wherein it was held that certain narrow widths of silk chiffon, which were assessed with duty at the rate of $3.50 and $4 a pound, respectively, under paragraph 399 of the tariff act of 1909, were properly dutiable at the rate of 50 per cent ad valorem under paragraph 403 of the said act as manufactures of silk not specially provided for.

In view of the importance of the issue you are hereby requested to file, in the name of the Secretary of the Treasury, an application with

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the United States Court of Customs Appeals for a review of the said decision in accordance with the provisions of subsection 29 of section 28 of the said tariff act of 1909.

Respectfully, JAMES F. CURTIS,
(89328.) *Assistant Secretary.*

Mr. WILLIAM K. PAYNE,
Deputy Assistant Attorney General, New York.

(T. D. 31751.)

Glazing stones.

Appeal directed from the decision of the Board of United States General Appraisers of June 16, 1911, G. A. 7235 (T. D. 31705), involving the classification of certain glazing stones.

TREASURY DEPARTMENT, *July 14, 1911.*

SIR: The department is in receipt of your letter of the 6th instant, in which you invite attention to the decision of the Board of United States General Appraisers of June 16, 1911, G. A. 7235 (T. D. 31705), wherein it is held that certain glazing stones, which were assessed with duty as articles composed of mineral substances under paragraph 95 of the tariff act of 1909 at the rate of 35 per cent ad valorem, were properly dutiable as nonenumerated manufactured articles at the rate of 20 per cent ad valorem under paragraph 480 of the said act.

In view of the importance of the issue, you are hereby requested to file, in the name of the Secretary of the Treasury, an application with the United States Court of Customs Appeals for a review of the said decision in accordance with the provisions of subsection 29 of section 28 of the said act of 1909.

Respectfully, JAMES F. CURTIS,
(89712.) *Assistant Secretary.*

Mr. WILLIAM K. PAYNE,
Deputy Assistant Attorney General, New York.

(T. D. 31752.)

Compensation—Lading and unlading on Sundays and holidays.

Officers and employees receiving a compensation per annum to be paid one and one-half times one three-hundred-and-sixtieth of annual salary for each day's work during regular working hours on Sundays or holidays in connection with the lading or unlading of merchandise under act of February 13, 1911.

TREASURY DEPARTMENT, *July 15, 1911.*

SIR: The department is in receipt of your letters of June 23 and July 11, 1911, in which you invite attention to the provisions of paragraph 3 of T. D. 31684, relative to the computation of the extra compensation to be paid to officers and employees receiving a rate of pay

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per annum for services rendered on Sundays and holidays in connection with the lading or unlading of vessels under the act of February 13, 1911, and also invite attention to the provisions of the act of June 30, 1906 (T. D. 27467), which provides that annual compensation of officers and employees of the Government "shall be divided into twelve equal installments, one of which shall be the pay for each calendar month; and in making payments for a fractional part of a month one-thirtieth of one of such installments shall be the daily rate of pay."

In order to avoid complicated computations you are hereby authorized to compute the extra compensation to be paid to officers and employees receiving a compensation per annum, upon the same basis, and said paragraph 3 of T. D. 31684 is hereby amended to read as follows:

Officers and employees receiving compensation per annum will be paid one and one-half times one three-hundred-and-sixtieth of their regular annual salary for each day's work, or part thereof, performed during regular working hours on Sundays or holidays in connection with the lading or unlading of cargo under said act.

Respectfully,
(43444.)
COLLECTOR OF CUSTOMS, *New York.*

JAMES F. CURTIS,
Assistant Secretary.

(T. D. 31753.)

Infant's socks.

Infant's socks looped or knitted at the junction of the heel and sole dutiable under paragraph 328, tariff act of 1909.

TREASURY DEPARTMENT, *July 15, 1911.*

SIR: The department is in receipt of a report from the confidential agent at Berlin relative to an investigation made by him in regard to the method of manufacture of infant's socks commercially known as "cut," which develops the fact that while the larger quantity of these socks is dutiable under paragraph 327 of the tariff act at the rate of 30 per cent ad valorem, one kind, sample inclosed, which is shipped from Burkhardtsdorf and Chemnitz, Germany, consists of so-called infant's cut hose made on flat machines. These socks are distinguished from the ordinary so-called cut hose by being looped or knitted at the junction of the heel and sole, and, in the opinion of the department, are properly dutiable under paragraph 328 of the tariff act, and you are accordingly directed, 30 days from the date hereof, to assess duty upon infant's socks of the character represented by the sample submitted under paragraph 328, leaving to the importers, if dissatisfied, their remedy by protest.

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Samples of these socks are on file in the offices of the collectors of customs at New York, Boston, Baltimore, Philadelphia, Chicago, and St. Louis, and collectors who have not samples are directed to forward samples of cut hose to one of the collectors named, where they are in doubt as to the proper classification of such merchandise.

Respectfully, JAMES F. CURTIS,
(85349.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Philadelphia, Pa.*

(T. D. 31754.)

Copyright.

Law and regulations governing the importation of copyrighted articles.

TREASURY DEPARTMENT, *July 17, 1911.*

Collectors and other officers of the customs:

The following sections of the copyright law, approved March 4, 1909, effective July 1, 1909, together with the regulations made in pursuance thereof, are published for the information and guidance of customs officers and others concerned:

SEC. 15. That of the printed book or periodical specified in section five, subsections (*a*) and (*b*) of this Act, except the original text of a book of foreign origin in a language or languages other than English, the text of all copies accorded protection under this Act, except as below provided, shall be printed from type set within the limits of the United States, either by hand or by the aid of any kind of typesetting machine, or from plates made within the limits of the United States from type set therein, or, if the text be produced by lithographic process, or photo-engraving process, then by a process wholly performed within the limits of the United States, and the printing of the text and binding of the said book shall be performed within the limits of the United States; which requirements shall extend also to the illustrations within a book consisting of printed text and illustrations produced by lithographic process, or photo-engraving process, and also to separate lithographs or photo-engravings, except where in either case the subjects represented are located in a foreign country and illustrate a scientific work or reproduce a work of art; but they shall not apply to works in raised characters for the use of the blind, or to books of foreign origin in a language or languages other than English, or to books published abroad in the English language seeking ad interim protection under this Act.

SEC. 30. That the importation into the United States of any article bearing a false notice of copyright when there is no existing copyright thereon in the United States, or of any piratical copies of any work copyrighted in the United States, is prohibited.

SEC. 31. That during the existence of the American copyright in any book the importation into the United States of any piratical copies thereof or of any copies thereof (although authorized by the author or proprietor) which have not been produced in accordance with the manufacturing provisions specified in section fifteen of this Act, or any plates of the same not made from type set within the limits of the United States, or any copies thereof produced by lithographic or photo-engraving process not performed within the limits of the United States, in accordance with the

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provisions of section fifteen of this Act, shall be, and is hereby, prohibited: *Provided, however*, That, except as regards piratical copies, such prohibition shall not apply:

(*a*) To works in raised characters for the use of the blind;

(*b*) To a foreign newspaper or magazine, although containing matter copyrighted in the United States printed or reprinted by authority of the copyright proprietor, unless such newspaper or magazine contains also copyright matter printed or reprinted without such authorization;

(*c*) To the authorized edition of a book in a foreign language or languages of which only a translation into English has been copyrighted in this country;

(*d*) To any book published abroad with the authorization of the author or copyright proprietor when imported under the circumstances stated in one of the four subdivisions following, that is to say:

First. When imported, not more than one copy at one time, for individual use and not for sale; but such privilege of importation shall not extend to a foreign reprint of a book by an American author copyrighted in the United States;

Second. When imported by the authority or for the use of the United States;

Third. When imported, for use and not for sale, not more than one copy of any such book in any one invoice, in good faith, by or for any society or institution incorporated for educational, literary, philosophical, scientific, or religious purposes, or for the encouragement of the fine arts, or for any college, academy, school, or seminary of learning, or for any State, school, college, university, or free public library in the United States;

Fourth. When such books form parts of libraries or collections purchased en bloc for the use of societies, institutions, or libraries designated in the foregoing paragraph, or form parts of the libraries or personal baggage belonging to persons or families arriving from foreign countries and are not intended for sale: *Provided*, That copies imported as above may not lawfully be used in any way to violate the rights of the proprietor of the American copyright or annul or limit the copyright protection secured by this Act, and such unlawful use shall be deemed an infringement of copyright.

SEC. 32. That any and all articles prohibited importation by this Act which are brought into the United States from any foreign country (except in the mails) shall be seized and forfeited by like proceedings as those provided by law for the seizure and condemnation of property imported into the United States in violation of the customs revenue laws. Such articles when forfeited shall be destroyed in such manner as the Secretary of the Treasury or the court, as the case may be, shall direct: *Provided, however*, That all copies of authorized editions of copyright books imported in the mails or otherwise in violation of the provisions of this Act may be exported and returned to the country of export whenever it is shown to the satisfaction of the Secretary of the Treasury, in a written application, that such importation does not involve willful negligence or fraud.

SEC. 33. That the Secretary of the Treasury and the Postmaster-General are hereby empowered and required to make and enforce such joint rules and regulations as shall prevent the importation into the United States in the mails of articles prohibited importation by this Act, and may require notice to be given to the Treasury Department or Post-Office Department, as the case may be, by copyright proprietors or injured parties, of the actual or contemplated importation of articles prohibited importation by this Act, and which infringe the rights of such copyright proprietors or injured parties.

SEC. 18. That the notice of copyright required by section nine of this Act shall consist either of the word "Copyright" or the abbreviation "Copr.", accompanied by the name of the copyright proprietor, and if the work be a printed literary, musical, or dramatic work, the notice shall include also the year in which the copyright was secured by publication. In the case of copies of maps, works of art, mod-

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els or designs for works of art, reproductions of a work of art, drawings or plastic works of a scientific of technical character, photographs, prints and pictorial illustrations, the notice may consist of the letter C enclosed within a circle, thus ©, accompanied by the initials, monogram, mark, or symbol of the copyright proprietor: *Provided*, That on some accessible portion of such copies or of the margin, back, permanent base, or pedestal, or of the substance on which such copies shall be mounted, his name shall appear. Works in which copyright is subsisting when this Act shall go into effect may be either in one of the forms prescribed herein or in one of those prescribed by the Act of June 18, 1874.

The register of copyrights is required by this act to print at periodic intervals a catalogue of the titles of articles deposited and registered for copyright, which printed catalogues, as they are issued, will be distributed to the collectors of customs of the United States and to the postmasters of all exchange offices of receipt of foreign mails.

REGULATIONS.

Under the copyright act the following articles are prohibited importation:

1. Piratical copies of any work copyrighted in the United States. By the term "piratical" is meant the printing, reprinting, publishing, copying, or reproducing without authority of the copyright proprietor of any article legally copyrighted and on which the copyright is still in force.

2. Articles bearing a false notice of copyright when there is no existing copyright thereon in the United States.

3. Authorized foreign reprints of books by an American author copyrighted in the United States.

4. Authorized copies of any book copyrighted in the United States not produced in accordance with the manufacturing provisions of section 15 of the copyright act, except such as are exempted in the said section 15 and section 31 of the act.

All books on which there is an existing copyright in the United States are prohibited importation unless produced in accordance with the manufacturing provision of section 15, whether copyrighted under this act or previous acts. (Opinion of the Attorney General, T. D. 30136, Nov. 24, 1909.)

Copyrighted books produced in accordance with the manufacturing provisions of section 16 of the copyright act, when exported and rebound abroad may be admitted to entry on their return to the United States. (Opinion of the Attorney General, T. D. 30414.)

As copyrighted books are required to be printed and bound in the United States, evidence should be required on entry that such books were exported in a bound condition and not as loose sheets, and that the printing and binding were both performed within the limits of the United States.

Imported articles found to bear a false notice of copyright will be detained and forfeiture proceedings instituted as provided in Schedule 32.

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If satisfactory evidence is not produced to the collector that such imported books were produced in accordance with the manufacturing provisions of section 15, or are exempt therefrom, the books will be seized and forfeiture proceedings instituted as provided in section 32.

Forfeiture proceedings instituted under the copyright act will be conducted in the same manner as in case of merchandise seized for violation of the customs laws, section 32, *supra*. (Arts. 1266 to 1269, Customs Regulations, 1908.)

Authorized editions of copyright books imported through the mails or otherwise in violation of the copyright act may, under customs supervision, be returned to the country of exportation whenever it is shown in a written application to the satisfaction of the Secretary of the Treasury that such importation was not due to willful negligence or fraud. (Sec. 32, *supra*.)

In any case in which a customs officer is in doubt as to whether an article is prohibited importation under the copyright act the articles should be detained and the facts reported to the department for instruction.

FRANKLIN MACVEAGH, *Secretary*.

JOINT REGULATIONS

Governing treatment of letters and packages received in the mails from foreign countries containing or supposed to contain articles prohibited importation by the copyright act of March 4, 1909.

The "Joint regulations governing the treatment of dutiable and supposed dutiable articles received in the mails from foreign countries" are also applicable in the treatment of articles which contain or which are supposed to contain matter prohibited importation by the copyright act, except as hereinafter modified:

Unsealed correspondence and packages (registered and unregistered) of all kinds which upon examination prove to contain articles prohibited importation by the copyright act shall be retained by customs officers, who will notify the addressee of the facts of the case. If an application is not made within a reasonable time to the Secretary of the Treasury for permission to return such articles to the country of export, the customs officers shall take appropriate steps to forfeit the articles as provided in section 32 of the copyright act.

Sealed articles supposed to contain matter prohibited importation by the copyright act must be appropriately marked to indicate that fact at the exchange office of receipt. The same conditions shall apply in regard to the marking, opening, and disposition of such sealed articles by the addressee or authorized agent as are required in the case of the opening and treatment of sealed "Supposed liable to customs duty"

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pieces. If the customs officer finds an article contains matter prohibited importation by the copyright act, he shall notify the addressee of the facts through the postmaster at the office of delivery. If an application is not then made within a reasonable time to the Secretary of the Treasury for permission to return the article to the country of export, the customs officer shall take appropriate steps to forfeit the matter as provided in section 32 of the copyright act.

Receipt should be taken for articles submitted to customs officials as prohibited importation under the copyright law and proper record made on the post-office records of the disposition of such articles as are not returned to be disposed of through the mails.

Notice of actual or contemplated illegal importations through the mails should be given to the Secretary of the Treasury or the Postmaster General. On receipt of such notices either by the Secretary of the Treasury or the Postmaster General instructions will be promptly issued.

FRANKLIN MACVEAGH,
Secretary of the Treasury.
FRANK H. HITCHCOCK,
Postmaster General.

(T. D. 31755—G. A. 7247.)

Unfinished violin necks—Parts of musical instruments.

Blocks of wood, rough-shaped into the form of violin necks and requiring the application thereto of further processes of manufacture before they become fitted for use as violin necks, are not, as imported, parts of musical instruments within the meaning of paragraph 467, tariff act of 1909, but are dutiable as manufactures of wood under paragraph 215 of said act.

United States General Appraisers, New York, July 17, 1911.

In the matter of protest 429679-33783 of Lyon & Healy against the assessment of duty by the collector of customs at the port of Chicago.

Before Board 1 (SHARRETTS, MCCLELLAND, and CHAMBERLAIN, General Appraisers).

SHARRETTS, *General Appraiser:* The merchandise in question is blocks of wood made into the form of violin necks. Duty was assessed thereon at 45 per cent ad valorem under paragraph 467 of the tariff act of 1909. The importers claim 35 per cent ad valorem as the rate of duty that should have been assessed on the merchandise under the provision of paragraph 215 of said act for partly manufactured articles of wood.

The evidence in this case shows that the merchandise as imported is unfinished material to be used in the manufacture of violins and that the cost of preparing it for use in this country as a part of a violin is double the value of the unfinished necks abroad.

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Different parts of violins that have been carefully fitted and assembled, or are ready to be assembled without additional labor, separately imported, would seem to be parts of musical instruments; while, on the contrary, blocks or unfinished materials, although they may have assumed the form of parts of musical instruments, but which have to be subjected to a substantial process of labor before they are adapted for use, have never become parts of musical instruments, and hence in our opinion are not included in the provision of paragraph 467. See G. A. 6312 (T. D. 27207).

We are not unmindful of board's decision, G. A. 4693 (T. D. 22141), the correctness of which has been concurred in and followed by this board in a number of cases, but in none of them was there any evidence tending to show that the articles were not adapted for use in the condition in which imported. On the contrary, the classifying officer reported in each case that the merchandise was finished violin necks.

In the case of Worthington *v.* Robbins (139 U. S., 337) the question involved was whether certain white enamel was dutiable as watch materials or not. Inasmuch as the present law makes no provision for materials for musical instruments, the case cited has no bearing upon the issue in this case. The only application that it has is the concluding sentence:

> That case [G. A. 4693, *supra*] was not, in its facts, at all like the present one, and this case must be decided upon the facts shown by the record.

Based upon the record, we find that the merchandise here in question is not parts of musical instruments and sustain the claim in the protest that the same is dutiable at 35 per cent ad valorem under paragraph 215 of the present tariff act.

The collector's decision is reversed.

(T. D. 31756—G. A. 7248.)

Velvets or velours.

Woven fabrics commonly known as figured "velvets" or "velours," composed wholly or in chief value of silk, the face of the fabric having substantially a pile surface, are properly dutiable under the provision in paragraph 399, tariff act of 1909, for "velvets * * * and other pile fabrics," according to their weight per square yard, rather than as woven silk fabrics under the same paragraph.

United States General Appraisers, New York, July 17, 1911.

In the matter of protest 432561, etc., of F. Schumacher & Co. against the assessment of duty by the collector of customs at the port of New York.

Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers; COOPER, G. A., absent).

HOWELL, *General Appraiser:* The goods in question consist of woven fabrics composed wholly or in chief value of silk, the face of the fabric having substantially a pile surface. They consist of uphol-

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stery or drapery materials which are commonly known as figured "velvets" or "velours," the terms being used interchangeably. They were assessed for duty as woven silk fabrics at the appropriate rate under paragraph 399, tariff act of 1909, and are claimed to be dutiable under the provision in said paragraph for "velvets * * * and other pile fabrics * * * weighing not less than five and three-fourths ounces per square yard, one dollar and fifty cents per pound."

The importers introduced the testimony of four witnesses, each of whom has dealt in this class of merchandise for a period exceeding 25 years, and their testimony is unanimous that the goods as represented by Exhibits 1, 2, 3, and 4 are known commercially in the wholesale markets of this country as "velvets" or "velours," and that they are within the general class of goods commercially known as "pile fabrics," and have been so known in the trade during their entire experience.

The Government failed to call any witnesses, and the testimony offered by the importers is uncontradicted.

In his brief the Assistant Attorney General argues that, notwithstanding the testimony in this case as to the commercial designation of these articles, the importers are not entitled to succeed in view of the decision of the Circuit Court of Appeals for the Second Circuit in United States *v.* McGibbon (113 Fed. Rep., 1021), which affirmed, without opinion, McGibbon *v.* United States (107 Fed. Rep., 265).

It is conceded by counsel for the importers that after the decision in the McGibbon case it was the practice, under the tariff act of 1897, to classify fabrics of this character, when weighing less than 8 ounces per square yard, as woven silk fabrics under paragraph 387, and those fabrics weighing more than 8 ounces per square yard as manufactures of silk under paragraph 391 of said act. G. A. 5964 (T. D. 26149).

The McGibbon case arose under the act of 1894, which contained a provision for pile fabrics similar to the provision in paragraph 386 of the tariff act of 1897, which has been reenacted in paragraph 399 of the tariff act of 1909 without any change material to this controversy.

The contention of the importers, however, is changed under the present act, as the rate of duty on pile fabrics is lower than the rate applicable to woven silk fabrics.

The McGibbon case was decided by this board in G. A. 3686 (T. D. 17638), where the merchandise is described as follows:

> Said merchandise consists of fabrics in the piece, composed of cotton and silk, silk the component material of chief value. Upon the face of one sample are longitudinal strips of plush, between which are strips of plain and ribbed surfaces. Upon another piece the face consists of plush figures upon a plain ground. These are upholstery goods, and are specifically designated in the upholstery trade as tapestries. The characteristic feature is the plush surface. Upon the evidence in this case, we find that they are pile fabrics and are not commercially known as plush.

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Upon appeal by the importers this decision was reversed by the circuit court, and Judge Townsend, who wrote the opinion, said:

The merchandise in question is a manufacture of silk and cotton, silk component material of chief value, which was within the provisions of paragraph 302 of the act of 1894, but was classified for duty as "pile fabrics" at $1.50 per pound under paragraph 299 of said act. These articles are known as "tapestries," and are not commercially known as "pile fabrics." In fact, they are fabrics made of cotton and silk, a certain portion thereof, namely, about one-half, having a pile surface. Inasmuch as the fabric as a whole is not substantially a pile fabric, and is not commercially known as such, the fact that a portion thereof has a pile surface is not sufficient to constitute it a pile fabric. The decision of the Board of General Appraisers is therefore reversed.

This decision, as we have seen, was affirmed without opinion by the Circuit Court of Appeals.

The Government contends that the McGibbon case was drawn to the attention of the Committee on Ways and Means of the House of Representatives of the Sixtieth Congress in the course of the revision of the tariff (see Notes on Tariff Revision, pp. 480, 504), and that Congress amended the paragraph dealing with pile fabrics of cotton or other vegetable fiber by inserting the words "whether or not the pile covers the entire surface," thus meeting the decision in the McGibbon case as to such pile fabrics, whereas no such amendment was made in the provision dealing with pile fabrics in chief value of silk, thus indicating the intention of Congress to adopt the decision so far as it applied to pile fabrics of silk.

On the other hand, the importers contend that notwithstanding these goods have not been classified as pile fabrics since the decision in the McGibbon case, yet under the ruling of Judge Townsend in that case the merchandise is "substantially a pile fabric," Exhibits 1, 2, and 4 having more than one-half pile surface, and Exhibit 3 having practically an entire pile surface, a portion of which has been embossed to form a pattern by being pressed down with a hot cylinder.

While it has been repeatedly held that a construction placed upon a doubtful statute, especially when it has received legislative recognition, affords a rule of statutory construction of the highest authority, we do not think this is a case where that rule is controlling. We have examined the record in the McGibbon case and find that the decision was based upon the testimony of one witness, a member of the importing firm, whose testimony as to the commercial designation of these fabrics was given without any previous examination to determine the extent of his dealings in this line of merchandise, or to show whether there was any general, uniform, and definite trade name under which the goods were bought and sold in the wholesale trade in this country. In response to a question of the General Appraiser as to whether or not the goods there in question were bought and sold in trade as pile fabrics, he replied: "Not that I know of; never in our store."

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The board apparently did not consider the testimony of this witness convincing, for, although there were no other witnesses examined in the case, the board found that the goods were pile fabrics. This conclusion is amply supported by the testimony of the witnesses in the case at bar, testimony which would seem to have been available to the Government when the McGibbon case was tried, as the witnesses state that they have dealt in these goods for over 25 years, and that they have always been known commercially as "pile fabrics."

On this record we do not feel justified in reaching any other conclusion than that the goods are dutiable under the provision for "velvets * * * and other pile fabrics" in paragraph 399, according to their condition and weight per square yard.

The protests are sustained accordingly.

(T. D. 31757).

Abstracts of decisions of the Board of General Appraisers.

Board 1—Sharretts, McClelland, and Chamberlain. *Board 2*—Fischer, Howell, and Cooper. *Board 3*—Waite, Somerville, and Hay.

BEFORE BOARD 1, JULY 11, 1911.

No. 26044. CINEMATOGRAPH FILMS.—Protests 313519, etc., of Pitt & Scott et al. (New York). Opinion by Sharretts, G. A.

Protests sustained as to cinematograph films on the authority of United States *v.* Susfeld (T. D. 31030).

No. 26045.—PROTESTS OVERRULED.—Protests 340873, etc., of A. L. Crawford, protests 271254, etc., of Mark Cross Co. et al., protests 472806, etc., of Dry Goods Economist et al., and protests 288155, etc., of Eimer & Amend (New York). Opinions by Sharretts, G. A.

Protests overruled for want of merit.

No. 26046.—WILLOW BASKETS—BASSINETS—CRADLES.—Protests 423446, etc., of Krauss & Co. et al. (New York).

Clothes baskets, hampers, market baskets, cradles, bassinets, and other baskets, composed of willow, some of which were lined with cotton, were held dutiable as baskets of wood under paragraph 214, tariff act of 1909, rather than as willow furniture or manufactures of willow (par. 212), or manufactures of cotton (par. 332). Brody *v.* United States (T. D. 31573), Krauss *v.* United States (T. D. 31574), and G. A. 7221 (T. D. 31587) followed.

MCCLELLAND, *General Appraiser:* The only testimony in the case is that produced by the protestants, and it appears therefrom that the cradles or bassinets are bought and sold and known generally as baskets.

No. 26047.—WILLOW BASKETS.—Protest 502052 of American Express Co., and protest 405359 of R. H. Stearns & Co. (Boston), and protest 445449 of Reed & Keller (New York). Opinions by McClelland, G. A.

Protests sustained as to willow baskets. Brody *v.* United States (T. D. 31573) followed.

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No. 26048.—Olive Oil in Tins.—Protest 284459 of R. U. Delapenha & Co., and protests 458069, etc., of Rockhill & Vietor (New York). Opinions by McClelland, G. A.

Protests sustained as to olive oil in 5-gallon tins. Abstract 25549 (T. D. 31589) followed.

No. 26049.—Court-Plaster—Toilet Preparations.—Protest 496229 of M. Levy (New York).

McClelland, *General Appraiser:* The merchandise consists of court-plaster, and the special report of the appraiser on the protest is as follows:

The merchandise in question marked "A" on invoice consists of court-plaster cut into various ornamental shapes and used for adornment of the face and not medicinally. Return for duty was accordingly made at 60 per cent ad valorem under paragraph 67, act of 1909, as a nonalcoholic toilet article.

Protestant makes several alternative claims, among them being one that duty should have been assessed at 25 per cent under paragraph 66 of said act, which reads:

Plasters, healing or curative, of all kinds, and court-plaster, twenty-five per centum ad valorem.

Section 67, under which duty was assessed, in so far as applicable, reads:

Preparations used as applications to the hair, mouth, teeth, or skin * * * in the manufacture * * * of which alcohol is not used.

The theory of the appraiser's return seems to be that although the merchandise is still pieces of court-plaster, it is not dutiable as such, for the reason that it has been cut into diminutive forms, such as stars, etc.; and this we hold to be erroneous. The *eo nomine* provision in paragraph 66, *supra*, must control over the general provision for preparations for the toilet in paragraph 67.

The claim for duty at the rate of 25 per cent under paragraph 66 is therefore sustained. Decision of the collector reversed accordingly.

No. 26050.—Beaver Strips.—Protest 508341 of Stern & Stern (New York). Opinion by McClelland, G. A.

Protests sustained as to beaver strips. G. A. 7109 (T. D. 30990) followed.

No. 26051.—Artificial Fruits—Filling Boxes.—Protests 493626–36788, etc., of American Shipping Co. (Chicago). Opinion by McClelland, G. A.

Filling boxes covered with wax and representing natural fruits were held dutiable as artificial fruits under paragraph 438, tariff act of 1909. Protests overruled. Abstract 15235 (T. D. 28132) followed.

Before Board 2, July 11, 1911.

No. 26052.—Surface-Coated Paper—Transfer Paper.—Protests 420051, etc., of American Express Co. et al. (Boston).

Fischer, *General Appraiser*: The merchandise here in question is a species of paper used in the printing of decalcomanias. It is invoiced as "single transfer paper," or as "duplex litho transfer paper." The paper termed "single" is a one-thickness paper the surface of which is coated with a preparation of gum, and the "duplex" is made of two layers united, the lower being plain and the upper coated with a gummy substance. This paper when lithographically printed is used to transfer such lithographic impressions to pottery ware, etc.

The collector assessed duty on the merchandise at the rate of 5 cents per pound under the provision in paragraph 411, tariff act of 1909, for "paper with coated

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surface or surfaces, not specially provided for," and the importers rely on the claim filed in their protests that said paper is dutiable properly at 30 per cent ad valorem under paragraph 415 of said act, as paper not specially provided for.

It is argued that this variety of paper is not a coated paper because not so considered under the previous tariff act. It is true that merchandise of this character under the tariff act of 1897 was held not to be "surface-coated" paper, because not so known or recognized in trade. That test does not apply in any way to limit the provision in the present act (paragraph 411), which embraces "papers with coated surface or surfaces." The board so ruled as to gummed paper in G. A. 7138 (T. D. 31142). The record in the cases before us includes no proof that the paper is not in fact "coated," and we hold that the classification of the merchandise is controlled by the descriptive terms of the first clause of paragraph 411. The protests are overruled, and the decision of the collector in each case is affirmed.

No. 26053.—Imperfect Paper—Paper Stock.—Protests 449716, etc., of B. R. Lawrence (Detroit).

Fischer, *General Appraiser:* The merchandise here in question consists of paper about 19 inches in width imported in rolls of varying diameters. It was assessed for duty at 30 per cent ad valorem under paragraph 415, tariff act of 1909, as "paper not specially provided for," and the importer claims that the said paper is free of duty under paragraph 644 of said act, which reads:

Paper stock, crude, of every description, including all grasses, fibers, rags (other than wool), waste, including jute waste, shavings, clippings, old paper, rope ends, waste rope, and waste bagging, and all other waste not specially provided for in this section, including old gunny cloth and old gunny bags, used chiefly for papermaking.

The imported article is not old refuse paper, but is a new paper and arrives in rolls of usual widths and commercial appearance. The claim relied on is that a paper of this kind when rejected as not being perfect is fit only for use in making paper, and would accordingly find classification under paragraph 644. While the testimony introduced by the importer shows that this merchandise was first sold as "hanging paper," and refused as imperfect, and subsequently offered to wall-paper manufacturers and rejected as unfit for use in the manufacture of wall paper, it does not satisfy us that the paper is unsuitable for the ordinary purposes of manufacture for which a commercial article of similar quality would commonly be used. It is shown that the paper was in fact used by the Ohio Box Board Co., who converted the same into paper board. Such use for the same may very well be said to be exceptional and not common. It is not sufficient to merely prove that an article has been used as paper stock, but it would be essential in order to establish the facts as claimed to show that that class of paper is utilized chiefly for such purposes. Makers of paper would not refuse high-class material if offered at a price that would enable them to use it as stock, but any special instance of that kind would not establish that a material was "paper stock" and not commercial "paper."

The article before us is concededly a paper, manufactured in the usual manner and put up in rolls. It has not lost its identity or character, and is paper and nothing else. In view of these facts we are of the opinion that the merchandise is dutiable as "paper not specially provided for," rather than as waste "used chiefly for papermaking." In Cohen *v.* United States (180 Fed. Rep., 634; T. D. 30803) silk organzine damaged in dyeing was held not to be silk waste. The board in that case said:

We know of no reason for excluding this article, which retains its character and identity as organzine, from the denominative provision therefor in paragraph 385, which could not with equal propriety be urged to change the classification of any article, if such article when imported is damaged or imperfect.

In Fawcett *v.* United States (154 Fed. Rep., 1003; T. D. 27978) the court in affirming a decision of the board held that silk yarn which fell from or adhered to

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the machines in the process of combing was dutiable nevertheless as "silk, partially manufactured," and not free of duty as "silk waste." In Abstract 20386 (T. D. 29464) the board held certain imperfect and defective artificial silk to be dutiable as silk, and not as waste. Note also ruling of the court in the case of Myers *v.* United States (110 Fed. Rep., 940) as to mica waste. We believe the paper here in question is susceptible of use as "paper," and overrule the claim in the protests that it is paper stock. The decisions of the collector are affirmed.

No. 26054.—Nickel-Iron Sheets.—Protests 135828, etc., of Hermann Boker & Co. et al. (New York).

Fischer, *General Appraiser:* The merchandise here in question consists of rolled sheets of metal composed of iron and nickel. These flat metal sheets are formed by welding to a plate of iron or steel on one or both sides thereof, as the case may be, a sheet of nickel and then rolling the metal so united down to the thickness of the sheet as imported.

The merchandise was assessed with duty at the rate of 45 per cent ad valorem under the provisions of paragraph 193, tariff act of 1897, and the importers claim that said goods are dutiable properly under paragraphs 131 and 132 of said act as sheets of iron or steel, coated.

In G. A. 6553 (T. D. 27963) and in G. A. 6613 (T. D. 28230) the board passed on metal sheets of the precise kind here in question and ruled adversely to similar claims as therein raised by the protestants. The conclusion of the board as announced in G. A. 6613 (T. D. 28230) was affirmed by the United States Circuit Court for the Southern District of New York in Boker *v.* United States (180 Fed. Rep., 959; T. D. 30841) and by the United States Court of Customs Appeals (T. D. 31678).

The decisions referred to are decisive of the issue here raised. Following the authorities cited, we overrule these protests and affirm the collector's assessment in each case.

No. 26055.—Protests Overruled.—Protests 423935, etc., of American Express Co. et al. (New York). Opinion by Fischer, G. A.

Protests overruled for want of merit.

No. 26056.—Trimmed Hats—Beaded Articles.—Protests 364473, etc., of Lord & Taylor, and protest 407550 of Stewart-Hess Co. (New York).

The protests related to trimmed hats classified as silk wearing apparel under paragraph 390, tariff act of 1897. Such as were composed in chief value of feathers or artificial flowers and in part of metal were held dutiable as manufactures in part of metal (par. 193), as claimed by the importers. Such as were composed in chief value of fur were held dutiable as fur hats (par. 432). Those composed in chief value of feathers and in part of spangles or pearl beads were held dutiable as "wearing apparel * * * in part of beads or spangles" (par. 408).

Howell, *General Appraiser:* * * * In the case of United States *v.* Berlinger, (167 Fed. Rep., 800; T. D. 29577) the Circuit Court of Appeals for the Second District held that hats and certain other articles composed in chief value of feathers and in part of metal were dutiable as manufactures in part of metal at the rate of 45 per cent ad valorem, under the provisions of paragraph 193, tariff act of 1897, and that decision would be controlling in this case were it not for the fact that the hats in question are composed in part of spangles or pearl beads.

We hold that the hats in question are properly dutiable under the provision in paragraph 408 of said act for "wearing apparel * * * composed wholly or in part of beads or spangles made of glass or paste, gelatin, metal, or other material, but not composed in part of wool" at the rate of 60 per cent ad valorem, which is the rate at which the hats in question were assessed for duty.

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No. 26057.—Straw Braids.—Protest 378213 of G. A. & E. Meyer (New York). Opinion by Howell, G. A.

Merchandise classified as untrimmed straw hats under paragraph 409, tariff act of 1897, was held dutiable as straw braids under the same paragraph, as claimed by the importers.

No. 26058.—Upholstery Goods.—Protest 421038 of P. Schneider's Sons & Co. (New York).

Woven fabrics of silk and cotton, which were classified as woven fabrics in chief value of silk under paragraph 399, tariff act of 1909, were held dutiable as "Jacquard figured upholstery goods * * * in chief value of cotton" (par. 326). Protest sustained.

No. 26059.—Silk Fabrics.—Protest 428365 of Vietor & Achelis (New York). Opinion by Howell, G. A.

Woven fabrics of silk were held to have been classified under the wrong subdivision of paragraph 399, tariff act of 1909. Protest sustained.

No. 26060.—Protests Overruled.—Protests 500796–36819, etc., of Marshall Field & Co. (Chicago), protest 485321 of H. B. Claflin Co., protests 182270, etc., of Martin L. Cohn Co., protests 479574, etc., of L. Hamburger & Co. et al., protest 485372 of E. Hanhart, protests 456589, etc., of F. Jacod Co., protest 470818 and protests 484755, etc., of Lichtenstein Millinery Co., protests 209592, etc., of Mills & Gibb et al., protest 481704 of Spielmann & Co., and protest 443575 of Stroheim & Romann (New York), protests 503225, etc., of L. Dannenbaum's Son & Co., protests 108111, etc., of Kohn, Adler & Co. et al., and protests 471164, etc , of F. B. Vandegrift & Co. (Philadelphia), and protest 433372 of B. Nugent & Brother Dry Goods Co. (St. Louis). Opinions by Howell, G. A.

Protests overruled for want of merit.

Before Board 3, July 11, 1911.

No. 26061.—Parts of Collar or Cuff Buttons.—Protest 469598 of D. S. Hesse & Bro. (New York).

Somerville, *General Appraiser:* This importation consists of incomplete collar or cuff buttons composed of metal, represented by the accompanying sample. The goods were assessed for duty under paragraph 427 of the tariff act of 1909, at 50 per cent ad valorem, which reads as follows:

427. * * * Buttons not specially provided for in this section, and all collar or cuff buttons and studs composed wholly of bone, mother-of-pearl, or ivory, fifty per centum ad valorem.

The claim of the protestants is that the goods are dutiable under paragraph 199 of said act as manufactures of metal or under said paragraph 427 at three-fourths of 1 cent per line per gross and 15 per cent ad valorem as buttons of metal not specially provided for.

The articles seem to be identical with the merchandise covered by Abstract 14982 (T. D. 28074), which were held to be dutiable under paragrapn 414 of the tariff act of 1897, which reads as follows:

414. * * * All collar or cuff buttons and studs, fifty per centum ad valorem.

The corresponding paragraph 427 in the act of 1909 differs materially from that of the tariff act of 1897 before cited. The provision for collar or cuff buttons and studs in the act of 1897 was not limited to the material out of which such buttons might be composed, whereas the present tariff act (par. 427) enumerates only collar or cuff buttons and studs composed wholly of bone, mother-of-pearl, or ivory. That description

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does not include the articles under consideration. We are therefore relegated, it seems, to that part of paragraph 427 which provides for buttons of metal, not specially provided for. The protest making this claim is sustained, and the collector's decision is reversed, with instructions to reliquidate the entry accordingly.

No. 26062.—Magnesia Articles.—Protests 268530, etc., of Fensterer & Ruhe (New York). Opinion by Hay, G. A.

Magnesia articles used for holding incandescent mantels in position, and classified under paragraph 95, tariff act of 1897, were held dutiable as unenumerated manufactured articles (sec. 6). Protests sustained on the authority of Fensterer *v.* United States (T. D. 31110).

No. 26063.—Granito.—Protest 472203 of H. F. Juventy (New York). Opinion by Hay, G. A.

Granito classified as an article of mineral substances under paragraph 95, tariff act of 1909, was held dutiable as an unenumerated manufactured article (par. 480), as claimed by the importer. Rossman *v.* United States (T. D. 31321) followed.

No. 26064.—Weight of Albumen.—Protest 469332 of Winter & Smillie (New York).

Hay, *General Appraiser:* The question arising in this case relates to the weight of certain albumen. It is claimed that the net weight of the merchandise was 2,535 pounds and not 3,067 pounds, as invoiced and assessed. It appears that the albumen was not weighed by customs officials, and the importers submitted at the hearing the invoices upon which payment was made, showing the weight to be as claimed in the protest.

The protest is sustained and the collector directed to reliquidate the entry accordingly.

No. 26065.—Bath Babies.—Protest 411615 of Butler Bros. (St. Louis). Opinion by Hay, G. A.

Bath babies classified as china toys under paragraph 93, tariff act of 1909, were held dutiable as dolls (par. 431), as claimed by the importers. United States *v.* Butler (180 Fed. Rep., 1005; T. D. 30847) followed.

No. 26066.—Protests Overruled.—Protest 496751 of R. B. Ways (Baltimore), protest 495144 of F. L. Dunne & Co., and protest 449074 of W. H. Revis (Boston), protest 452535–35145 of Bernard, Judae & Co. (Chicago), protest 460233–3639 of Illinois Central Railroad Co., and protest 476648–3483 of Oberle & Henry (New Orleans), and protest 491764 of Acker, Merrall & Condit Co., protests 485687, etc., of Batjer & Co. et al., protests 451333, etc., of H. F. Juventy, and protest 474099 of Ignaz Strauss & Co. (New York). Opinions by Hay, G. A.

Protests overruled for want of merit.

Before Board 1, July 13, 1911.

No. 26067.—Rosaries.—Protests 540447, etc., of C. Wildermann Co. (New York). Opinion by Sharretts, G. A.

Protests sustained as to rosaries on the authority of G. A. 7053 (T. D. 30731).

No. 26068.—Willow Baskets.—Protest 437873 of Basket Importing Co. (New York). Opinion by McClelland, G. A.

Clothes baskets composed of willow and classified as manufactures of willow under paragraph 206, tariff act of 1897, were held dutiable as furniture of wood (par. 208), as claimed by the importers. Abstract 21987 (T. D. 30069) followed.

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No. 26069.—Kippered Herring.—Protest 477827 of R. F. Downing & Co. (Boston). Opinion by Chamberlain, G. A.

Protest sustained as to kippered herring in tins. United States *v.* Rosenstein (T. D. 31357) followed.

No. 26070.—Protests Overruled.—Protest 501483 of Julia W. Carpenter (Cincinnati), and protest 476881 of S. M. Hexter & Co. (Cleveland). Opinions by Chamberlain, G. A.

Protests overruled for want of merit.

Before Board 2, July 13, 1911.

No. 26071.—Printed Matter—Embossed Paper Articles.—Protest 492855–37095 of Bernard, Judae & Co. (Chicago).

Fischer, *General Appraiser:* In this case certain paper articles were assessed with duty at 35 per cent ad valorem under paragraph 415, tariff act of 1909, as embossed paper articles, and are claimed dutiable at 25 per cent ad valorem under paragraph 416 of said act as printed m tter.

There are two samples in the case. The one represents the first item on the invoice and is numbered 311, and the other represents the second invoice item, 9751–52. The former is a printed card and is classifiable as claimed, under paragraph 416, rather than as assessed, under paragraph 415. Abstract 24233 (T. D. 31070). The latter is a booklet cover not printed, or perhaps may be better described as an embossed paper folder. As to merchandise of that character, we are not satisfied that it is entitled to classification as printed matter. The protest is sustained as to item 311, and in all other respects overruled. Reliquidation will follow accordingly.

No. 26072.—Rough-Trimmed Mica.—Protests 500497, etc., of E. Munsell & Co. (New York) Opinion by Fischer, G. A.

Protests sustained as to rough-trimmed mica. Myers *v.* United States (T. D. 31301) followed.

No. 26073.—Lithographic Prints.—Protest 460271 of G. S. Bush & Co. (Portland, Oreg.). Opinion by Fischer, G. A.

Merchandise classified as decalcomanias under paragraph 412, tariff act of 1909, was held dutiable as lithographically printed paper under the same paragraph, as claimed by the importers.

No. 26074.—Protests Overruled.—Protest 456753–35047 of Bernard, Judae & Co. (Chicago), and protest 363161 of J. W. Hampton, jr., & Co. (Philadelphia). Opinions by Fischer, G. A.

Protests overruled for want of merit.

No. 26075.—Dressed Dolls.—Protest 490465 of Stern Bros. (New York).

Howell, *General Appraiser:* The merchandise in question is described in the invoice as a "dressed doll." It was returned by the appraiser as a "manufacture of silk and decorated china, appliquéed," and was assessed for duty by the collector at the rate of 60 per cent ad valorem under the provisions of paragraph 390, tariff act of 1897. Various claims are made in the protest, of which one is that the merchandise is properly dutiable as dolls at the rate of 35 per cent ad valorem under the provisions of paragraph 418 of said act.

The protest has been submitted for our decision on the record. The only information we have as to the character of the merchandise involved is that contained in

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the special report of the appraiser, wherein that officer states that the merchandise "is not the well-known toy doll of commerce, but consists of fancy figures in the form of ladies in fancy costume. Silk being the component material of chief value, they were returned for duty as a manufacture of silk, appliquéed."

There is nothing in the record to controvert the report of the appraiser. The protest is accordingly overruled and the decision of the collector is affirmed.

No. 26076.—Hatters' Plush.—Protests 427061, etc., of Aitken, Son & Co., protests 496725, etc., of Ufland Millinery Co., and protest 496291 of United States Express Co. (New York).

Protests sustained as to hatters' plush. G. A. 7067 (T. D. 30791) followed.

No. 26077.—Silk Fabrics.—Protest 415783 of Bassett, McNab & Co., and protest 444436 of Campbell, Metzger & Jacobson (New York). Opinions by Howell, G. A.

Silk fabrics were held to have been classified under the wrong subdivision of paragraph 399, tariff act of 1909. Protests sustained.

No. 26078.—Elastic Belting.—Protest 454414 of Guthman, Solomons & Co. (New York). Opinion by Howell, G. A.

Elastic belting in chief value of rubber, which was classified as silk belting under paragraph 401, tariff act of 1909, was held dutiable as manufactures of rubber (par. 463). Protest sustained on the authority of Abstract 25606 (T. D. 31616).

No. 26079.—Silk Webbing—Neckties—Wearing Apparel.—Protests 451553, etc., of Knauth, Nachod & Kuhne (New York).

Howell, *General Appraiser:* The merchandise in question is described in the invoice as "silk and cotton webbing." It was returned by the appraiser as "silk wearing apparel, partly made," and was assessed for duty by the collector at the rate of 60 per cent ad valorem under the provisions of paragraph 402, tariff act of 1909.

The protest has been submitted for our decision on the record, which includes the following special report of the appraiser:

The merchandise in question covered by both protests consists of silk and cotton webbing in the piece, silk chief value, to be used for neckties, the only requisite necessary for the finished article being to cut off the desired length.

It is admitted that the merchandise in question consists of webbing in chief value of silk, and even though its ultimate use, as stated by the appraiser, is for the making of neckties, we do not think that is sufficient ground for excluding it from classification under the specific provision for webbings in paragraph 401 of said act, for the merchandise should be assessed for duty in the condition in which it is imported.

We hold that the merchandise is properly dutiable as silk webbing at the rate of 50 per cent ad valorem under the provisions of paragraph 401 of said act. Note Abstract 24150 (T D. 31044).

The protests making that claim are sustained and the entry will be reliquidated accordingly. In all other respects the protests are overruled.

No. 26080.—Maline Nets.—Protests 473489, etc., of J. Kridel Sons & Co. et al. (New York). Opinion by Howell, G. A.

Protests sustained as to maline nets. Abstract 24701 (T. D. 31255) followed.

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No. 26081.—APPLIQUÉED SILKS.—Protest 422005 of Rusemann, Galland & Wechmar (New York). Opinion by Howell, G. A.

Protest sustained as to appliquéed silks. United States *v.* Vietor (T. D. 31355) followed. The board sustained a further claim that silk fabrics had been classified under the wrong subdivison of paragraph 399, tariff act of 1909.

No. 26082.—ARTIFICIAL-SILK WEBBING.—Protest 496675 of A. Steinhardt & Bro. (New York). Opinion by Howell, G. A.

Artificial-silk webbing classified as silk webbing by similitude under paragraph 389, tariff act of 1897, was held dutiable as cotton webbing (par. 20). Protest sustained on the authority of Thomass *v.* United States (T. D. 31107).

No. 26083.—COTTON CLOTH.—Protests 297396, etc., of Witcombe, McGeachin & Co. et al. (New York). Opinion by Howell, G. A.

Cotton cloth classified as colored was held dutiable as bleached or unbleached. G A. 6956 (T. D. 30206) followed.

No. 26084.—PROTESTS OVERRULED.—Protest 431236 of W. N. Proctor Co. (Boston), protests 189295, etc., of Hutchinson, Pierce & Co. (Bridgeport), protest 488875–35900 of Theo. Ascher Co., protest 476976–36394 of Butler Bros., and protest 488631–35891 of Marshall Field & Co. (Chicago), protest 462088 of American Hat Co. (Los Angeles), and protests 493855, etc., of J. Donat & Co., protests 485774, etc., of Frank & Lambert et al., protest 363391 of Haughton & Lee, protests 472903, etc., of Martin Labe et al., protest 495432 of B. Rinaldo, protest 154384 of J. & H. Rosenberg, protests 312237, etc., of Samstag & Hilder Bros. et al., protest 422799 of W. H. Stiner & Son, protest 463379 of W. Stursberg, Schell & Co., and protest 484524 of Wertheimer & Co. (New York). Opinions by Howell, G. A.

Protests overruled for want of merit.

BEFORE BOARD 3, JULY 13, 1911.

No. 26085.—PINE CONES—SEEDS—NUTS—WEIGHT.—Protest 463812 of P. Garguilo & Bro. (New York).

WAITE, *General Appraiser:* On authority of Abstract 25595 (T. D. 31616) we sustain the claim in the protest that the kernels obtained from pine-tree cones are dutiable as nuts under paragraph 283, tariff act of 1909, thereby overruling the collector's assessment as seeds under paragraph 266. The further claim is made in the protest that duty should be assessed only on the actual weight of the kernels and not on the husks or shells. The report of the appraiser shows that by actual test the weight of the kernels is equal to 20 per cent of the gross weight. The importers have introduced no evidence to show error in this manner of arriving at dutiable weight, and we therefore affirm the estimate and authorize the collector to reliquidate on such basis at the rate of 1 cent per pound under paragraph 283.

No. 26086.—WEIGHT OF SILK.—Protest 478140 of Heyliger & Raubitschek (New York). Opinion by Waite, G. A.

Silk veilings were held to have been assessed with duty on the basis of an excessive weight. Protest sustained.

No. 26087.—POWDERED COCOA.—Protest 463322 of Park & Tilford (New York). Opinion by Waite, G. A.

Merchandise which had been inadvertently classified as prepared cocoa under paragraph 292, tariff act of 1909, was held dutiable as powdered cocoa, unsweetened, under the same paragraph. Protest sustained.

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No. 26088.—PROTESTS OVERRULED.—Protest 469584 of A. M. Hirschfeld & Co., and protest 482348 of Park & Tilford (New York). Opinions by Waite, G. A.

Protests overruled for want of merit.

No. 26089.—OLD BAGGING—RAGS.—Protests 450850-3612, etc., of Oberle & Henry (New Orleans). Opinion by Somerville, G. A.

Old bagging classified as waste under paragraph 479, tariff act of 1909, was held free of duty as rags (par. 660). Protests sustained. G. A. 7194 (T. D. 31447) followed.

No. 26090.—ROTTEN FRUIT.—Protests 383704, etc., of Arguimbau & Ramee et al. (New York), and protests 382982, etc., of O. F. Maniscalco (Philadelphia). Opinions by Somerville, G. A.

The board sustained claims for allowances on account of decay in fruit imported under the act of 1897. Denunzio *v.* United States (164 Fed. Rep., 909; T. D. 29075) followed.

No. 26091.—DECAYED MACARONI.—Protests 479852, etc., of Fantini & Latorraca et al. (New York). Opinion by Somerville, G. A.

Protests sustained as to decayed macaroni on the authority of G. A. 7228 (T. D. 31650).

No. 26092.—PROTESTS OVERRULED.—Protest 456805-3611 of Oberle & Henry (New Orleans), and protests 403144, etc., of Do Giorgio Fruit Co. of New York et al. (New York). Opinions by Somerville, G. A.

Protests overruled for want of merit.

No. 26093.—PROTESTS OVERRULED.—Protest 481340 of J. Hope & Sons Engineering & Manufacturing Co. (Providence), and protests 500826, etc., of G. W. Van Gilder et al. (St. Paul). Opinions by Hay, G. A.

Protests overruled for want of merit.

BEFORE BOARD 1, JULY 14, 1911.

No. 26094.—SHOE BUCKLES.—Protests 422481, etc., of American Express Co. (Boston). Opinion by Sharretts, G. A.

Shoe buckles classified as beaded articles under paragraph 421, tariff act of 1909, were held dutiable as manufactures in chief value of metal (par. 199), as claimed by the importers.

No. 26095.—BASKETS.—Protests 398123, etc., of William A. Bird (Buffalo), and protest 417104 of O. G. Hempstead & Son (Philadelphia). Opinions by McClelland, G. A.

Baskets of willow or straw classified as stained baskets under paragraph 214, tariff act of 1909, were held dutiable as unstained under the same paragraph. Protests sustained.

No. 26096.—WILLOW BASKETS.—Protests 402167-31237, etc., of Bernard, Judae & Co. et al. (Chicago), protest 385951 of Hawley & Letzerich (Galveston), protest 514158-5809 of Illinois Central Railroad Co., and protest 504443-3768 of George William Rueff (New Orleans), and protests 438419, etc., of Charles Zinn & Co. (New York), and protests 406816, etc., of H. Bayersdorfer & Co. (Philadelphia). Opinions by McClelland, G. A.

Protests sustained as to willow baskets. Brody *v.* United States (T. D. 31573) and Krauss *v.* United States (T. D. 31574) followed.

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No. 26097.—Willow Sheets.—Protest 476566 of Johannes Meyer (New York). Opinion by McClelland, G. A.

Willow sheets classified as bleached under paragraph 422, tariff act of 1909, were held dutiable as unbleached under the same paragraph, as claimed by the importer.

No. 26098.—Chip Baskets—Willow Furniture.—Protests 384937-30124, etc., of Butler Bros. (Chicago), protest 432052 of Basket Importing Co. (New York), and protest 356451 of Frank P. Dow Co. (Port Townsend). Opinions by McClelland, G. A.

Chip baskets classified as manufactures of wood under paragraph 208, tariff act of 1897, were held dutiable as manufactures of chip (par. 449). The board sustained a further claim that cradles, hampers, and clothes baskets of willow were dutiable as furniture of wood (par. 208) rather than as manufactures of willow (par. 206) as classified. Abstract 21987 (T. D. 30069) followed.

No. 26099.—Candy Boxes.—Protest 407230 of Butler Bros. (New York). Opinion by McClelland, G. A.

Merchandise classified as surface-coated paper boxes under paragraph 418, tariff act of 1909, was held dutiable as toys (par. 431), as claimed by the importers.

No. 26100.—Beaver Strips.—Protests 410541, etc., of Greenhut & Co. et al. (New York), and protest 414224 of L. Dannenbaum's Son & Co. (Philadelphia). Opinions by McClelland, G. A.

Protests sustained as to beaver strips. G. A. 7109 (T. D. 30990) followed.

No. 26101.—Fur Skins, Dressed.—Protests 489057, etc., of H. Jaeckel & Sons (New York). Opinion by McClelland, G. A.

Protests sustained as to furs dressed on the skin. G. A. 7063 (T. D. 30765) followed.

No. 26102.—Tree Ornaments.—Protests 447617-34873, etc., of Butler Bros. (Chicago). Opinion by McClelland, G. A.

Protests sustained as to tree ornaments. Abstract 24253 (T. D. 31070).

No. 26103.—Olive Oil in Tins.—Protests 499113, etc., of Acker, Merrall & Condit Co. et al. (New York). Opinion by McClelland, G. A.

Protests sustained as to olive oil in 5-gallon tins, on the authority of Abstract 25938 (T. D. 31720).

No. 26104.—Foot Shampoo—Toilet Articles—Medicinal Preparations.—Protest 489937 of Hussa & Co. (New York).

McClelland, *General Appraiser:* The appraiser in his special report on this protest states that the merchandise "described on the invoice as 'Woltat' consists of a powder put up in a paper envelope and known as foot shampoo for foot baths. In view of the fact that it is a toilet article and possesses no more medicinal properties than face cream, powder, or lotion in the using, and is similar in character to head shampoo and bath powder," duty was accordingly assessed at the rate of 60 per cent ad valorem under the provision of paragraph 67 of the tariff act of 1909.

A variety of claims in the alternative are made for rates of duty other than that assessed. The only witness examined was the importer, and he knew little of the composition of the article except as he had been advised by the makers of it. Asked to state its "medicinal" properties, witness said:

It has cooling, soothing properties; it reduces excessive perspiration; it softens callouses, corns, and the like, and, as I have stated before, it is very good in case of chilblains.

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From the trend of the testimony it is evident that the claim relied upon by protestants is that the merchandise is a medicinal preparation, and we are thus led to consider whether, assuming, since it is not contradicted, that this article has the properties claimed for it, it is to be considered as medicinal.

The Century Dictionary defines medicinal as follows:

1. A substance used as a remedy for disease; a substance having or supposed to have curative properties, hence, figuratively, anything that has a curative or remedial effect.

We think this definition broad enough to include an article designed to grant relief from the foregoing ailments. It clearly is not a toilet article, and we therefore sustain the claim for duty at the rate of 25 per cent under paragraph 65.

Decision of collector reversed.

No. 26105.—HARNESS BUCKLES—SADDLERY.—Protest 498278 of F. L. Kraemer & Co. (New York). Opinion by McClelland, G. A.

Harness buckles classified as manufactures of metal under paragraph 199, tariff act of 1909, were held dutiable as saddlery (par. 461). Protest sustained.

No. 26106.—FUR HATS.—Protests 424455, etc., of Marcel Schmitt et al. (New York).

MCCLELLAND, *General Appraiser:* The merchandise in question consists of fur hats, assessed with duty at the rate of 50 per cent ad valorem under paragraph 439, tariff act of 1909, as fur wearing apparel in harmony with Abstract decision 22244 (T. D. 30165). Protestants claim that duty should have been assessed at 20 per cent ad valorem plus the specific rates according to value, under the provisions of paragraph 446 of said act.

Upon rehearing, Abstract 22244, *supra*, was reversed and the contention of protestants was sustained in our decision of May 23, 1910, Abstract 23344 (T. D. 30645); and in harmony, therefore, with this latter decision, we sustain the protests and reverse the action of the collector in each case.

No. 26107.—CRICKET BATS.—Protest 447041 of F. L. Slazenger (New York).

MCCLELLAND, *General Appraiser:* The appraiser in his special report on the protest states that "the merchandise marked X consists of cricket bats made in chief value of willow," and duty was accordingly assessed at the rate of 45 per cent ad valorem under paragraph 212 of the tariff act of 1909. The claim of protestant is that the bats should have been assessed with duty at 35 per cent ad valorem as manufactures of wood. This claim is urged on two theories: First, that the provision for "manufactures of osier or willow" was not intended to cover such articles as these cricket bats, for the reason that the terms "osier" and "willow" as used are interchangeable and refer only to the osier-willow and not to the wood of the stock of the tree; and, second, that the bats are made of both cane and willow, and that cane is the component of chief value thereof. The second proposition is affirmatively established by the uncontradicted testimony of the importer, and cane being wood it will be unnecessary for us to pass upon the question as to whether the other material in the bat is willow within the meaning of paragraph 212, *supra*.

The protest claim is sustained. Collector reversed.

No. 26108.—APRON LEATHER.—Protests 417091, etc., of O. G. Hempstead & Son et al. (Philadelphia). Opinion by McClelland, G. A.

Protests sustained as to apron leather. United States *v.* Richards (T. D. 31548) followed.

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No. 26109.—Wood Veneer.—Protest 446573 of Nozaki Bros. (San Francisco).

McClelland, *General Appraiser:* The merchandise involved in this protest is wood veneer returned by the appraiser as "manufactures of wood and paper, wood chief value." Duty was assessed at the rate of 35 per cent ad valorem under the provisions of paragraph 215 of the tariff act of 1909. It is claimed to be dutiable as veneers of wood at the rate of 20 per cent ad valorem under the provisions of paragraph 203 of said act.

Considerable evidence has been submitted on the part of the Government with the view of showing that material such as that in question, being practically wood shavings fortified by a paper backing, the two together being only four one-thousandths of an inch in thickness, is not known among lumber dealers as wood veneers. The same question, however, was considered in Abstract decision 1968 (T. D. 25411) and decided adversely to the protestants, but on appeal to the United States Circuit Court the decision of the board was reversed and the claim of protestants sustained in the case of American Trading Co. v. United States (142 Fed. Rep., 214; T. D. 25918). In harmony with the court's decision we sustain the claim of protestants, the decision of the collector being reversed.

No. 26110.—Racing Shells.—Protest 445985 of John E. Thayer, jr. (Boston).

McClelland, *General Appraiser:* Involved in this protest is the classification of two 8-oar racing shells imported from England into the port of Boston. The collector assessed duty on the boats at the rate of 35 per cent ad valorem under paragraph 215 of the tariff act of 1909 as manufactures of wood, and it is claimed that instead of being so assessed for duty these boats should have been subjected to a tonnage tax equal to $7 per gross ton under the provisions of section 37 of said act.

That part of section 37, *supra*, invoked reads as follows:

> There shall be levied and collected annually on the first day of September by the collector of customs of the district nearest the residence of the managing owner, upon the use of every foreign-built yacht, pleasure-boat or vessel, not used or intended to be used for trade, now or hereafter owned or chartered for more than six months by any citizen or citizens of the United States, a sum equivalent to a tonnage tax of seven dollars per gross ton.

It is at once apparent, we think, that the claim of protestant is wholly without merit. An 8-oar racing shell is neither a "yacht, pleasure boat, or vessel" within the meaning of the statute invoked.

The collector, in the absence of any more specific provision in the tariff act, very properly classified the boats as manufactures of wood.

Assessment affirmed.

No. 26111.—Dressed Lava Stone—Building Stone.—Protests 313495, etc., of Manufacturers Paper Co. et al. (New York).

Dressed lava stones classified as building stones under paragraph 118, tariff act of 1897, was claimed to be dutiable as grindstones (par. 119), or as burr stones (par. 116), or as unenumerated articles (sec. 6).

McClelland, *General Appraiser:* * * * In addition to the testimony taken at the hearing and under commission duly issued by the board, the record in G. A. 4923 (T. D. 23030) was, by consent of counsel, made a part of the record in this case.

The appraiser in his special report on protest 313495 states:

> The merchandise in question consists of two vertical mill stones, size about 20 by 30 inches, manufactured out of lava.

While the special reports on the other protests vary somewhat in form, they describe substantially the same kind of stone. The protesting company relied mainly upon the effort to establish that lava stone is not a building stone, but this question

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seems to have been settled by the board in G. A. 4923, *supra*, and as the evidence fails to sustain either one of the claims made, but on the contrary, tends to sustain the collector's classification, we overrule the protests. The decision of the collector is affirmed in each case.

No. 26112.—Wool Grease.—Protest 446566 of Marden, Orth & Hastings (San Francisco).

The question at issue was whether or not wool grease had been improved in condition within the meaning of paragrabh 290, tariff act of 1909. Protest overruled.

McClelland, *General Appraiser:* * * * The case was transferred to Boston for trial at that port. The testimony proved two facts: (1) That protestants imported into the port of Boston similar merchandise; and (2) that there is approximately 100 per cent difference between the value of unimproved wool grease and improved wool grease.

The record, however, is wholly insufficient to establish the claim of protestants. No sample of the wool grease imported into the port of Boston by protestants is before us for comparison, nor does it appear how it was classified, and the mere fact that the article in question is invoiced at a price equal to the value of unimproved wool grease can not be accepted as satisfactory proof of the fact that the wool grease in issue was unimproved.

No. 26113.—Protests Overruled.—Protests 382158, etc., of Jones Bros. Co. et al. (Boston), protests 387883-30676, etc., of Downing, Judae & Co. et al., and protests 500781-36316, etc., of Marshall Field & Co. (Chicago), protests 437137, etc., of Bartley Bros. & Hall et al., protests 290813, etc., of E. H. Burr et al., protests 455874, etc., of Decorative Plant Co. et al., protests 471705, etc., of Germain, Hoffbauer & Helm Co. et al., protest 482883 of German American Export & Import Co., protests 479520, etc., of A. C. Horn Co., protests 408263, etc., of C. D. Jackson & Co. et al., protest 489265 of A. Klipstein & Co., protest 461452 of F. L. Kraemer & Co., protest 500506 of Thomas Meadows & Co., protests 402365, etc., of A. L. Simon & Co. et al., protests 438393, etc., of Sun Kwong On et al., protests 427236, etc., of A. A. Vantine & Co. et al., and protest 481193 of Welch, Holme & Clarke Co. (New York), protests 161400, etc., of Rudolph Hantzsch et al., protests 476639, etc., of F. B. Vandegrift & Co., and protest 491168 of J. L. Vandiver Co. (Philadelphia), protest 419521 of Meier & Frank Co. (Portland, Oreg.) protests 415742, etc., of B. Nugent & Bro. et al. (St. Louis), and protest 446543 of Atkins, Kroll & Co., and protests 419004, etc., of R. S. Wheeler et al. (San Francisco). Opinions by McClelland, G. A.

Protests overruled for want of merit.

No. 26114.—Kippered Herring.—Protest 502116 of Kennedy & Moon (Boston), protest 503908 of Rosenstein Bros. (New York), and protests 499430, etc., of Koons, Wilson & Co. et al. (Philadelphia). Opinions by Chamberlain, G. A.

Protests sustained as to kippered herring in tins on the authority of United States *v.* Rosenstein (T. D. 31357).

No. 26115.—Protests Overruled.—Protest 504745 of W. Schade & Co. (Newport News), protest 501203 of National Aniline & Chemical Co., protests 461075, etc., of Russian Caviar Co. et al., and protests 485057, etc., of D. Wilson et al. (New York), protests 413201, etc., of Henry Rohner et al. (Philadelphia), and protests 392004, etc., of M. Furuya Co. (Port Townsend). Opinions by Chamberlain, G. A.

Protests overruled for want of merit.

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BEFORE BOARD 2, JULY 14, 1911.

No. 26116.—IRON DRUMS—CYLINDRICAL VESSELS.—Protest 450327, etc., of Balfour Guthrie & Co. et al. (San Francisco.)

FISCHER, *General Appraiser:* In these cases the importations consist of caustic potash and bleaching powder imported in thin sheet-metal drums. No question is raised as to the classification of the contents of the drums, and it is urged that the drums, as the usual containers of goods, whether free or liable to specific duty, are entitled to free entry. The collector assessed the metal coverings with duty at the rate of 30 per cent ad valorem under that part of paragraph 151, tariff act of 1909, relating to "cylindrical or tubular tanks or vessels, for holding gas, liquids, or other material, whether full or empty."

In the Garramone case (T. D. 31577) and in the Braun case (T. D. 31596) it was held that the ruling in the Marx & Rawolle case (T. D. 31210) did not apply to the usual coverings or containers of merchandise designed merely to transport the same and useless after the contents are removed. The evidence in these cases shows that the metal drums used in holding caustic potash and bleaching powder on being emptied of their contents can not be used commercially for any similar use and possess no value other than as scrap metal. The decisions of the collector are reversed, and the claims in the protests sustained.

No. 26117.—PROTESTS ABANDONED.—Protests 355522, etc., of M. J. Corbett & Co. et al. (New York.) Opinion by Fischer, G. A.

Protests abandoned.

No. 26118.—ELASTIC BELTS.—Protests 287358-26064, etc., of G. W. Sheldon & Co. et al. (Chicago.) Opinion by Howell, G. A.

Protests sustained as to elastic belts. G. A. 7052 (T. D. 30730) followed.

No. 26119.—PROTESTS OVERRULED.—Protest 428977-33493 of Morris Mann & Reilly, and protests 488949-35297, etc., of G. W. Sheldon & Co. (Chicago), and protest 485269 of Bell & Duncan, protests 453983, etc., of F. W. Seybel Co. et al., protests 126773, etc., of F. B. Vandegrift & Co., and protests 189920, etc., of John Zimmermann Co. et al. (New York). Opinions by Howell, G. A.

Protests overruled for want of merit.

BEFORE BOARD 3, JULY 14, 1911.

No. 26120.—SOUR GRASS—MARSH HAY.—Protest 472692 of Roy Taylor (Detroit).

WAITE, *General Appraiser:* The commodity in question is invoiced as 50 tons of wild sour grass. It was assessed for duty under paragraph 258, tariff act of 1909, at $4 per ton as hay. It is claimed to be free of duty under paragraph 578, which provides for grass, fibers, etc. This merchandise seems to be referred to variously in the different papers filed in the case (among which is the contract for its purchase) as marsh hay, sour grass, and blue-joint sour grass. An inspection of the sample introduced in evidence shows it to be dried or cured wild grasses of various kinds, among which is some of the well-known blue joint, some round-stemmed grasses, some known as "redtop," some triangular-stemmed grasses, and the ordinary flat marsh grass. It is cured in the sun and put up in a dried condition into bales. The testimony in the case shows that this was purchased for packing purposes principally. We do not think, however, that because it may be profitably used for packing various goods that it necessarily is excluded from classification as hay. Clover, timothy, alfalfa, or any well-known hay may be used for packing purposes

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if it can be purchased cheaply enough. One of the reasons for the use of this commodity for packing material is its cheapness. It is undisputed, however, that it may be and is used as a hay for feeding stock; in fact, the testimony shows that some of this shipment was used for that purpose. We think we would be authorized to take notice of the fact that this kind of commodity has been used and known as hay primarily, and we do not think the evidence is sufficient to warrant us in finding that its use has been changed so that it is susceptible of another classification. We find, therefore, that it is hay, and overrule the protest. Note G. A. 3216 (T. D. 16427) on the subject of marsh grass, and also an unpublished decision of the board under date of November 30, 1903 (protest 50991-B).

No. 26121.—Protests Overruled.—Protest 492711 of Elizabeth Harding (New York). Opinion by Waite, G. A.

Protest overruled for want of merit.

No. 26122.—Tam O'Shanter Stones.—Protest 484706 of Charles A. Johnson & Co. (New York). Opinion by Hay, G. A.

Tam O'Shanter stones classified as articles of mineral substances under paragraph 95, tariff act of 1909, were held dutiable as nonenumerated manufactured articles (par. 480). Protest sustained.

No. 26123.—Ground Quartz—Ground Feldspar.—Protests 484929, etc., of Roessler & Hasslacher Chemical Co. (New York). Opinion by Hay, G. A.

Ground quartz and ground feldspar classified as articles of mineral substances under paragraph 95, tariff act of 1909, were held dutiable as nonenumerated manufactured articles (par. 480). Protests sustained.

No. 26124.—Clerical Error.—Protest 483341 of Stix-Baer-Fuller Dry Goods Co. (St. Louis). Opinion by Hay, G. A.

The board sustained a claim for relief on the ground of clerical error.

No. 26125.—Protests Overruled.—Protest 489019 of F. Behrend, and protests 479015, etc., of Hensel, Bruckmann & Lorbacher (New York). Opinions by Hay, G. A.

Protests overruled for want of merit.

Decisions on Applications for Rehearing.

No. 26126.—Rehearing Granted—Preserved Fruit.—Application by protestants for rehearing on protests 259967, etc. (New York), of Meyer & Lange, decided May 31, 1911, Abstract 25772 (T. D. 31654). No. 301. Before Board 3, June 27, 1911.

Application granted. Merchandise classified as preserved fruit under paragraph 263, tariff act of 1897, is claimed to be dutiable as "jellies" under the same paragraph.

No. 26127.—Rehearing Granted—Opium.—Application by protestants for rehearing on protest 470869 (New York) of Merck & Co., decided May 26, 1911, Abstract 25716 (T. D. 31654). No. 297. Before Board 1, June 29, 1911.

Application granted. The question at issue is whether opium which the appraiser reports to have been dried and pressed in bricks is dutiable under paragraph 41, tariff act of 1909, as "crude" or as "manufactured."

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No. 26128.—Rehearing Granted—Fish.—Application by the protestants for rehearing on protest 452511 (New York) of Zucca & Co., decided May 31, 1911, Abstract 25764 (T. D. 31654). No. 298. Before Board 1, June 29, 1911.

Application granted. Fish classified as in packages of less than one-half barrel under paragraph 270, tariff act of 1909, is claimed to be dutiable as prepared fish (par. 273).

No. 26129.—Rehearing Granted—Shortage.—Application by the protestants for rehearing on protest 452631-3637 (New Orleans) of American Sugar Refining Co., decided June 5, 1911, Abstract 25792 (T. D. 31675). No. 296. Before Board 3, July 5, 1911.

Application granted. The importers claim a refund of duty on account of an alleged shortage.

No. 26130.—Rehearing Granted—Reliquidation.—Application by the Government for rehearing on protest 490779 (Boston) of Simons, Hatch & Whitten Co., decided June 8, 1911, Abstract 25830 (T. D. 31675). No. 299. Before Board 3, July 5, 1911.

The Government claims that the protest, which was sustained by the board, was filed against a reliquidation pursuant to a board decision, and that it is therefore invalid.

No. 26131.—Rehearing Granted—Sapphire Bearings for Electrical Instruments.—Application by the protestants for rehearing on protests 408257, etc. (New York) of General Electric Co., decided April 18, 1911, G. A. 7209 (T. D. 31519). No. 279. Before Board 1, July 6, 1911.

Application granted. Bearings for instruments of precision other than watches or clocks which were classified as "articles composed * * * of * * * semi-precious stones" under paragraph 112, tariff act of 1909, and held dutiable as unenumerated manufactured articles, (par. 480), are claimed to be dutiable as jewels for watches and clocks (par. 192), or as precious stones (par. 449), or as unenumerated unmanufactured articles (par. 480).

No. 26132.—Rehearing Granted—Cooked Ham in Tins.—Application by the protestants for rehearing on protests 402641, etc., (San Juan), of Cerecedo Hermanos & Co., decided May 18, 1911, Abstract 25617 (T. D. 31616). No. 294. Before Board 3, July 6, 1911.

Application granted. Cooked ham in hermetically sealed tins, classified as "meats, prepared or preserved" under paragraph 286, tariff act of 1909, is claimed to be dutiable as "hams" (par. 284).

No. 26133.—Rehearing Denied.—Application by protestants for rehearing on protest 455945 (New York) of Hormann, Schutte & Co., decided June 20, 1911, Abstract 25943 (T. D. 31720). No. 300. Before Board 2, July 6, 1911.

Application denied.

No. 26134.—Rehearing Denied.—Application by the Government for rehearing on protest 459128 (New York) of F. B. Vandegrift & Co., decided June 16, 1911, Abstract 25910 (T. D. 31708). No. 302. Before Board 1, July 6, 1911.

Application denied.

(T. D. 31758.)

Additional list of customs notaries.

[Omitted from this edition.]

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(T. D. 31759.)

Sea-grass furniture, baskets, etc.

Furniture, baskets, etc., manufactured from sea grass dutiable under paragraph 463 of the tariff act of 1909.

TREASURY DEPARTMENT, *July 18, 1911.*

SIR: The department duly received your letter of June 16, 1911, in regard to the classification of furniture, baskets, etc., manufactured from sea grass, in which you request specific instructions as to whether such merchandise is covered by the provisions of paragraph 78 of the tariff act, that moss and sea grass, eel grass, and seaweeds, if manufactured or dyed, shall be subject to duty at the rate of 10 per cent ad valorem.

In this regard I have to advise you that, in the opinion of the department, dyed sea grass advanced beyond its natural state by braiding or plaiting, if suitablé for making or ornamenting hats, would be dutiable under paragraph 422 of the said act at 20 per cent ad valorem, and, if braided or plaited for any other purpose, such as seats for chairs, making baskets, etc., as a manufacture of grass at the rate of 35 per cent ad valorem under paragraph 463 of the said tariff act. Furniture and baskets made from sea grass are also properly dutiable as manufactures of grass at 35 per cent ad valorem under said paragraph 463.

The provision in paragraph 78 referred to by you s a new one, and the department is of the opinion that the substances enumerated therein may be manufactured or advanced in condition, as, for instance, by bleaching, but that in order to fall within the purview of the paragraph they must still be known to trade and commerce as moss and sea grass, eel grass, and seaweed, and the department agrees with you that the term "manufactured" is not synonymous with "manufactures of."

Respectfully, JAMES F. CURTIS,
(89140.) *Assistant Secretary.*

SURVEYOR OF CUSTOMS, *Grand Rapids, Mich.*

(T. D. 31760.)

Drawback on wire rope.

Drawback on wire rope manufactured by the Williamsport Wire Rope Co., of Williamsport, Pa., from imported wire.—T. D. 12168 of December 11, 1891, revoked.

TREASURY DEPARTMENT, *July 18, 1911.*

SIR: Drawback is hereby allowed under section 25 of the tariff act of August 5, 1909, and the drawback regulations promulgated thereunder (T. D. 31695 of June 16, 1911), on wire rope manufactured by

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the Williamsport Wire Rope Co., of Williamsport, Pa., with the use of imported wire in combination with domestic hemp or fiber, oil, paint, or wire.

The allowance may be made in accordance with the quantity of imported wire used, as shown in the drawback entry, after official verification of exported quantities. The necessary samples of each shipment shall be furnished by the exporters for the purpose of verification of the claim for imported material used.

The manufacturer's sworn statement dated June 29, 1911, is transmitted herewith for filing in your office.

T. D. 12168 of December 11, 1891, is hereby revoked.

Respectfully, JAMES F. CURTIS,
(88949.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Philadelphia, Pa.*

(T. D. 31761.)

Construction of 10 per cent regulation.

Joint-control agreement referred to in section 13 of Department Circular No. 54 of September 21, 1910, held to apply to estates only.

TREASURY DEPARTMENT, *July 12, 1911.*

GENTLEMEN: By direction of the Secretary, I have to acknowledge the receipt of your letters of March 29 and July 11, 1911, in which you ask an interpretation of section 13 of department circular of September 21, 1910, with a view to determining whether the joint-control provision contained therein would apply and operate as an offset to the company's liability on a fidelity bond executed under the conditions and circumstances which you set forth.

In reply, you are advised that the section referred to is definitely limited to bonds "executed on behalf or on account of a *fiduciary*," and the joint-control agreement therein provided contemplates "the deposit or other disposition of a suitable and sufficient portion of the *estate* so held that no further sale, mortgage, pledge, or other disposition can be made thereof without such company's approval except by the decree of a court having proper jurisdiction." It will be observed that the provision relates specifically and solely to estates. The joint-control provision contained in said section does not therefore embrace a class of cases similar to the one covered by your inquiry.

The above decision, interpreting section 13 of department circular No. 54 of September 21, 1910, is promulgated for the information of all bonding companies and others concerned.

Respectfully, R. O. BAILEY,
Assistant Secretary.

——— ———, *Baltimore, Md.*

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(T. D. 31762.)

Testing molasses.

Article 979 of the Customs Regulations of 1908, which provides that the test of any group shall not be above 56 degrees, is hereby modified in so far as it relates to the testing of molasses from the British colony of Antigua.

TREASURY DEPARTMENT, *July 18, 1911.*

SIR: The department duly received your letter of April 20, 1911, transmitting a report from the appraiser at your port, dated April 17, 1911, relative to the method now employed in testing molasses from the British colony of Antigua.

The appraiser reports that it is the practice of his office to sample packages of molasses, where the packages are of the same size, in groups of not more than 25, as provided in article 958 of the Customs Regulations of 1908, and where the test of any of such groups is found to be above 56° to classify such groups in accordance with the provisions of article 979 of the said regulations at 6 cents per gallon under paragraph 216 of the tariff act.

It appears from reports previously received from you that under the regulations above referred to groups are sometimes found which test over 56° and are accordingly assessed with duty at the higher rate, notwithstanding the average of the whole shipment may test below 56°.

In view of this, it has been suggested to the department that the regulations governing the testing of such molasses be modified so that in the event of no group exceeding in average test 59° the duty shall be assessed on the average test of the whole shipment, it being urged that such an arrangement would be readily workable and would protect the interests both of the shipper and of the United States Government.

In the opinion of the department the suggestion is not without merit, for the reason that as each shipment is in a sense a unit it would seem that logically the molasses should be classified for duty upon the average test of the entire shipment, and the appraiser states that this is his practice in classifying for duty low-grade molasses averaging between 30° and 50°; that is, to classify according to the average test of the entire shipment.

In view of the foregoing, the department has reached the conclusion that the regulations in this regard should be modified, and as the appraiser reports that the tests of various groups of this molasses do not ordinarily vary more than 5°, he is hereby directed, in arriving at the polariscopic test of molasses from the British colony of Antigua, to ascertain the average test of each cargo and to treat as separate shipments the groups which differ more than 3° from the average test. Article 979 of the Customs Regulations of 1908, which provides that the test of any group shall not be above 56° S., is hereby modified accordingly.

Respectfully,
(67934.)

JAMES F. CURTIS,
Assistant Secretary.

COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 31763.)

Rosaniline.

Rosaniline dutiable under paragraph 15 of the tariff act of 1909, as a coal-tar color or dye at the rate of 30 per cent ad valorem.

TREASURY DEPARTMENT, *July 18, 1911.*

SIR: I have to acknowledge the receipt of your letter of May 20, 1911, submitting a report in the matter of the hearing held in your office on April 25, 1911, under the department's instructions of March 18, upon the subject of the contemplated change in the classification of rosaniline, as recommended by the appraiser under date of December 19, 1910.

After a careful consideration of this question, the department concurs in the views expressed by the appraiser at your port under date of May 10, 1911, that rosaniline should be assessed with duty under paragraph 15 of the tariff act as a coal-tar color or dye at the rate of 30 per cent ad valorem, and you are accordingly directed, 30 days from the date hereof, to assess duty upon merchandise of this character at the rate of 30 per cent ad valorem under said paragraph 15.

Respectfully,
(83774.)

JAMES F. CURTIS,
Assistant Secretary.

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 31764.)

Drawback on bee veils.

Drawback on bee veils manufactured by Dadant & Sons, of Hamilton, Ill., with the use of imported French silk and cotton tulle.

TREASURY DEPARTMENT, *July 18, 1911.*

SIR: Drawback is hereby allowed under section 25 of the tariff act of August 5, 1909, and the regulations promulgated thereunder (T. D. 31695 of June 16, 1911), on bee veils manufactured by Dadant & Sons of Hamilton, Ill., with the use of imported French silk and cotton tulle.

A manufacturing record shall be kept showing the number and style of bee veils manufactured, the quantity and kind of imported material used, and the quantity of wastage.

A sworn abstract from this record shall be filed with each drawback entry.

The allowance may be that claimed in the drawback entry and shown by the abstract from the manufacturing record provided it shall not exceed 11.80 yards of cotton tulle for each 1 dozen "A" veils and 10.14 yards for each 1 dozen "B" veils, with an additional allow-

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ance for worthless wastage not to exceed 1 per cent of such quantity, and for the silk used in facing these veils, 1.66 yards of silk for each dozen veils, with an allowance for wastage not to exceed 10 per cent thereof. In connection with "D" silk tulle veils the maximum allowance shall not exceed 11.80 yards of imported silk, with 1 per cent thereof as a maximum wastage allowance. For each dozen globe veils the maximum allowance shall be 9.89 yards of cotton tulle, with a maximum wastage allowance of 6 per cent of such quantity, and for the silk facing 1.44 yards of imported silk, with a wastage allowance not to exceed 10 per cent.

The manufacturer's sworn statement, dated June 26, 1911, is inclosed herewith for filing in your office.

Respectfully, JAMES F. CURTIS,
(89117.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Chicago, Ill.*

(T. D. 31765.)

Drawnwork articles—Ornamental openwork.

While the department concurs in the decision of the board, G. A. 7227 (T. D. 31649), with respect to the merchandise the subject thereof, it does not concur in the general interpretation placed by the board upon the language of paragraph 349 of the tariff act with respect to plain openwork, not ornamented or embroidered, tamboured, appliquéed, or scalloped by hand or machinery.

TREASURY DEPARTMENT, *July 19, 1911.*

SIR: I have to acknowledge the receipt of your letter of the 5th ultimo, inviting attention to the decision of the Board of United States General Appraisers of May 29, 1911, G. A. 7227 (T. D. 31649), sustaining your assessment of duty at the rate of 60 per cent ad valorem under paragraph 349 of the tariff act upon certain "drawn thread articles of flax, cotton, or other vegetable fiber in imitation of lace or embroidery."

You state that, following the department's letter of August 24, 1909, wherein it expressed the opinion that it concurred in your interpretation that the provision appearing in paragraph 349, "ornamented or embroidered in any manner," does not cover drawnwork ornamented by hemstitching, and that the only kind of drawnwork dutiable under this provision is such as has been embroidered, tamboured, appliquéed, or scalloped by hand or machinery, it has been the practice at your port not to classify merchandise of the character under consideration under paragraph 349, and that the effect of the construction given by the board will result in a radical change of practice in this regard.

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After careful consideration of this question, the department is of the opinion that the general practice heretofore established should not be disturbed. The department, however, concurs in the decision of the board with respect to the merchandise under consideration in the case referred to that "Beyond any question the articles are decorated and embellished ornamental openwork, and as such are dutiable under paragraph 349 of the tariff act of 1909." The department does not concur in the general interpretation placed by the board upon the language of paragraph 349 with respect to plain openwork, not ornamented or embroidered, tamboured, appliquéed, or scalloped by hand or machinery.

You will be governed accordingly.

Respectfully, JAMES F. CURTIS,
(67951.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 31766.)

Bones.

Bones which have been thoroughly cleaned and which are in a condition ready to be manufactured into various articles, are properly dutiable at the rate of 10 per cent ad valorem under paragraph 480, tariff act of 1909.

TREASURY DEPARTMENT, *July 19, 1911.*

SIR: The department duly received your letter of June 20, 1911, transmitting a communication from the appraiser at your port dated June 15, 1911, in regard to the classification of pieces or sections of bone which have been thoroughly cleaned and which are in a condition to be manufactured into various handles, buttons, etc.

The appraiser states that these bones are identical in character with those the subject of the decision of the Board of United States General Appraisers of December 19, 1907, Abstract 17758 (T. D. 28634). This decision covers bones, the ends of which had been cut off and then placed in water brought to a temperature sufficiently high to remove therefrom all marrow, grease, and extraneous matter. Duty was assessed upon these bones under paragraph 449 of the tariff act of 1897 as manufactures of bone at the rate of 35 per cent ad valorem, and the board overruled the protest of the importers that the bones were free of duty under paragraph 499 of the said act as crude bones without affirming the collector's assessment of duty.

In view of the decision cited, the department is of the opinion that the bones under consideration are not crude within the meaning of paragraph 515 of the tariff act of 1909, and it concurs in the views expressed by you that the bones are properly dutiable under paragraph 480 of the said act as nonenumerated unmanufactured articles at the rate of 10 per cent ad valorem.

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You are accordingly directed, 30 days from the date hereof, to assess duty upon bones of the character under consideration at the rate of 10 per cent ad valorem under paragraph 480 of the tariff act of 1909.

Respectfully, JAMES F. CURTIS,
(74509.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 31767.)

Authority of Pacific Surety Co. of California revoked.

[Circular No. 46.]

TREASURY DEPARTMENT, *July 14, 1911.*

To bond-approving officers of the United States and others concerned:

The Pacific Surety Co. of California, having advised the department of the adoption of an amendment to its charter, discontinuing the writing of fidelity and surety business under the provisions of the act of August 13, 1894, as amended by the act of March 23, 1910, which authorizes surety companies to act as sole surety upon recognizances, stipulations, bonds, or undertakings given to the United States, makes it necessary to revoke the authority of said company to transact a fidelity and surety business on behalf of the United States, from and after this date, under said acts, and this action has accordingly been taken and the company duly advised.

It will not be necessary for bond-approving officers or other agents of the Government charged with the duty of taking bonds, recognizances, stipulations, or undertakings to renew such obligations in other surety companies certified to transact fidelity and surety business by the Secretary of the Treasury under the said acts until such time as the obligations are renewable under any existing law, rule, regulation, or other requirement.

The said company will be required, however, to submit under oath a quarterly report to the Treasury Department, giving a detailed statement of all risks in force, together with all accrued claims of whatever character upon which said company has assumed liability under any laws of the United States or the rules or regulations of any department or other branch of the Government.

All officers of the United States having knowledge of any existing claim or of the occurrence of any event or the existence of circumstances which may hereafter result in a claim against the Pacific Surety Co. of California are hereby directed to communicate the facts in detail to the Secretary of the Treasury (section of surety bonds) within 30 days after this notice, including the name of the principal, the date and amount of the bond, the nature of the claim, the circumstances out of which it arose, and the status of the claim at the time of such report.

FRANKLIN MACVEAGH, *Secretary.*

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(T. D. 31768.)

Addition to quarantine regulations—Cholera-bacillus carriers.

[Circular No. 47.]

TREASURY DEPARTMENT, *July 19, 1911.*

To National, State, and local quarantine officers, collectors of customs, shipowners and agents, and others concerned:

In accordance with the act of Congress approved February 15, 1893, and to further prevent the entrance of cholera into the United States, the following regulation, in addition to those contained in Quarantine Regulations of the Treasury Department issued October 20, 1910, and in Department Circular No. 45, July 6, 1911, is hereby promulgated, and shall remain in force until otherwise ordered:

"All steerage passengers arriving at ports in the United States from ports or places infected with cholera shall be subjected to bacteriological examination and shall not be admitted to entry until it has been determined by said examination that they are not cholera-bacillus carriers."

FRANKLIN MACVEAGH, *Secretary.*

(T. D. 31769.)

Discontinuance of Form Catalogue No. 4463.

TREASURY DEPARTMENT, *July 19, 1911.*

To collectors and other officers of the customs:

The following amended form of mail entry covering merchandise in transit through the United States to foreign countries via seaboard ports is hereby adopted, the same to be furnished by the transportation companies:

T. and E. No. ——. PORT OF ——, ——, 191—.

IMMEDIATE TRANSPORTATION AND EXPORTATION ENTRY.

Entry of merchandise imported into this district by —— —— on the —— day of ——, 19—, in cars from ——, Canada, to be exported to —— by way of New York. Date, ——, 19—.

Marks and numbers.	Description.	Value.	Duty.

Agent or consignee.

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T. and E. No. ——. Port of ——, ——, 19—.

IMMEDIATE TRANSPORTATION AND EXPORTATION ENTRY.

Entry of merchandise brought into this district by —— —— on the —— day of ——, 19—, in cars from ——, to be exported to ——. Date, ——, 19—.

Marks and numbers.	Description of merchandise.

CERTIFICATE OF INSPECTION AND LADING OF MERCHANDISE IN TRANSIT FOR EXPORTATION.

PORT OF ——, ——, 19—.

To the surveyor of the port:

You will direct an inspector to examine the goods described in the within entry, and, if found to agree exactly therewith, to superintend the lading thereof on board the —— —— line for ——.

Customhouse, ——, ——, 19—.

——— ———,
Acting Deputy Collector.

I, having examined the goods described in the within entry, and having found them to agree therewith, superintend the lading as follows:

Packages.	Vessel.	Date.	Inspector.	Clearance.

I certify the above to be correct.

——— ———,
Acting Deputy Collector.

[Indorsement.] T. and E. Bond No. ——. —— Line. For ——, —— day of ——, 19—. One year.

As this form is designed with a view to the elimination of the necessity for the issuance of certificates of delivery, the blank form therefor (Cat. No. 4463) is hereby discontinued.

JAMES F. CURTIS, *Assistant Secretary.*

(T. D. 31770.)

Importation of viruses, serums, etc.—List of manufacturing establishments licensed.

TREASURY DEPARTMENT, *July 22, 1911.*

To collectors and other officers of the customs:

The following table contains a list of the establishments holding, on July 1, 1911, licenses issued by the Treasury Department in accordance with the act of Congress approved July 1, 1902, entitled "An act to regulate the sale of viruses, serums, toxins, and analogous prod-

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ucts in the District of Columbia, to regulate interstate traffic in said articles, and for other purposes."

The number of the license of each firm is also given, together with the names of the several products for which licenses have been granted.

FRANKLIN MACVEAGH, *Secretary.*

LIST OF ESTABLISHMENTS MANUFACTURING VIRUSES, SERUMS, ETC.

No. of license.	Establishments.	Products.
1	Parke, Davis & Co., Detroit, Mich....	Diphtheria antitoxin, antigonococcic serum, antistreptococcic serum, antitetanic serum, antitubercle serum, bacterial vaccines, erysipelas and prodigiosus toxines (Coley), tuberculins, and vaccine virus.
2	H. K. Mulford Co., Philadelphia, Pa..	Diphtheria antitoxin, antidysenteric serum, antigonococcic serum, antimeningococcic serum, antipneumonic serum, antistreptococcic serum, antitetanic serum, tuberculins, vaccine virus, bacterial vaccines, normal horse serum, and rabies virus.
3	Dr. H. M. Alexander & Co., Marietta, Pa.	Diphtheria antitoxin, antirabic virus, tuberculins, vaccine virus, and normal horse serum.
5	Fluid Vaccine Co., Milwaukee, Wis..	Vaccine virus.
8	The Cutter Laboratory, Berkeley, Cal.	Diphtheria antitoxin, antistreptococcic serum, tuberculins, bacterial vaccines, and vaccine virus.
9	Frederick Stearns & Co., Detroit, Mich.	Diphtheria antitoxin, streptolytic serum, and pneumolytic serum.
11	Pasteur Institute of Paris, Paris, France	Diphtheria antitoxin, antidysentêric serum, antimeningococcic serum, antiplague serum, antistreptococcic serum, sérum antivenimeux, antitetanic serum, and antiplague-vaccine.
12	Chemische Fabrik auf Actien, Berlin, Germany.	Diphtheria antitoxin and antistreptococcic serum.
14	Health department of the city of New York.	Diphtheria antitoxin, antitetanic serum, antirabic virus, vaccine virus, tuberculin, and antimeningococcic serum.
15	Dr. W. R. Hubbert Serum Laboratory, Detroit, Mich.	Diphtheria antitoxin.
16	National Vaccine and Antitoxin Institute, Washington, D. C.	Diphtheria antitoxin, antigonococcic vaccine, vaccine virus, normal horse serum, antistaphylococcic vaccine, and antistreptococcic vaccine.
17	Lederle Antitoxin Laboratories, New York City.	Diphtheria antitoxin, antistreptococcic serum, antitetanic serum, suspension of lactic acid bacilli, vaccine virus, and antityphoid vaccine.
18	Burroughs, Wellcome & Co., London, England.	Diphtheria antitoxin, antigonococcic serum, antidysenteric serum, anticolonbacillus serum, antistaphylococcic serum, antistreptococcic serum, antityphoid serum, tuberculins, and bacterial vaccines.
19	Memorial Institute for Infectious Diseases, Chicago, Ill.	Diphtheria antitoxin.
21	Swiss Serum and Vaccine Institute, Berne, Switzerland.	Diphtheria antitoxin, antidysenteric serum, antimeningococcic serum, antipneumonic serum, antiplague serum, antistreptococcic serum, tuberculins, anticholera vaccine, antiplague vaccine, antityphoid vaccine, and antitetanic serum.
22	Institut Bacteriologique Lyon, Lyons, France.	Antidiphtheric serum and normal goat serum.
23	Bacterio-Therapeutic Laboratory, Asheville, N. C.	Tuberculins.
24	Farbwerke, vormals Meister Lucius und Brüning, Hoechst-on-Main, Germany.	Diphtheria antitoxin, antidysenteric serum, antimeningococcic serum, antipneumonic serum, antistreptococcic serum, antitetanic serum, and tuberculins.
25	Tuberculin Society of St. Petersburg, St. Petersburg, Russia.	Tuberculinum purum.
27	Institut Pasteur de Lille, Lille, France.	Serum antivenimeux.
28	Bacteriologisches Institut Lingner, Dresden, Germany.	Pyocyanase.
29	The Behringwerk, Marburg, Germany.	Antitetanic serum and tuberculin.
30	Dr. G. H. Sherman, Detroit, Mich.....	Bacterial vaccines.
31	E. Merck, Darmstadt, Germany.....	Antidiphtheric serum, antimeningococcic serum, antipneumonic serum, antistreptococcic serum, normal horse serum (dried), and normal horse serum.
32	Kalle & Co., Biebrich, Germany.....	Tuberculin (Rosenbach).
33	American Biologic Co., Kansas City, Mo.	Antirabic virus.
34	The Beraneck Laboratory, Neuchatel, Switzerland.	Tuberculin (Beraneck)
35	Dr. Carl Spengler, Davos-Platz, Switzerland.	I. K. immune blood.

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(T. D. 31771.)

Samples—Free entry.

Samples intended for use in soliciting orders, not intended to be sold or to mingle in the commerce of this country, to be admitted free of duty. T. D. 4828 is hereby modified accordingly.

TREASURY DEPARTMENT, *July 25, 1911.*

SIR: It is represented to the department that the practice in the classification and appraisal of samples is conflicting.

In T. D. 4828 of April 9, 1881, it was ruled that "pieces of cloths, edgings, textile fabrics, bound or unbound cards containing buttons of various patterns, single gloves or stockings, and representatives of other classes of goods which are obviously intended for use merely as samples by which to sell the class of goods which they represent are to be regarded as having no commercial value and are, therefore, free of duty."

The practice above authorized will be modified as follows:

Samples brought into this country for the purpose of soliciting orders, not intended for sale, and which do not mingle in the commerce of the country, should not be considered as imported merchandise within the meaning of the tariff act. They are incidents of commerce, rather preliminaries to importations than actual importations in the strict sense.

You will, therefore, admit free of duty all bona fide samples which are obviously intended for use merely as samples of merchandise by which to sell the class of goods which they represent, irrespective of the question of their commercial value. On the other hand, samples intended for sale or which are not imported in good faith as samples within the definition above set forth, shall be deemed to be articles of merchandise and shall be charged with the appropriate rate of duty according to the class of goods to which they belong.

T. D. 4828 is hereby modified accordingly.

Respectfully, JAMES F. CURTIS,
(80035.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 31772.)

Reciprocity between the United States and Canada.

[Circular No. 48.]

TREASURY DEPARTMENT, *July 26, 1911.*

To collectors and other officers of the customs:

1. Section 2 of an act entitled "An act to promote reciprocal trade relations with the Dominion of Canada, and for other purposes," approved July 26, 1911, 3.10 p. m., is as follows:

SEC. 2. Pulp of wood mechanically ground; pulp of wood, chemical, bleached, or unbleached; news print paper, and other paper, and paper board, manufactured from mechanical wood pulp or from chemical wood pulp, or of which such pulp is the component material of chief value, colored in the pulp, or not colored, and valued

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at not more than four cents per pound, not including printed or decorated wall paper, being the products of Canada, when imported therefrom directly into th United States, shall be admitted free of duty, on the condition precedent that no export duty, export license fee, or other export charge of any kind whatsoever (whether in the form of additional charge or license fee or otherwise), or any prohibition or restriction in any way of the exportation (whether by law, order, regulation, contractual relation, or otherwise, directly or indire tly), shall have been imposed upon such paper, board, or wood pulp, or the wood used in the manufacture of such paper, board, or wood pulp, or the wood pulp used in the manufacture of such paper or board.

2. The provisions of the section above quoted took effect immediately on the approval of the act.

3. Articles entered on and after the taking effect thereof and articles previously imported, but for which no entry had been made, and articles previously entered without the payment of duty and under bond for warehousing, transportation, or any other purpose, for which no permit of delivery to the importer, or his agent, had been issued, are subject to the provisions of the said section.

4. In order to be entitled to the benefits of said section 2, articles must be entered subject to the following provisions:

(*a*) The exporter must declare on the invoice that the articles are the product of Canada, and that their exportation is not subject to any "export duty, export license fee, or other export charge of any kind whatsoever (whether in the form of additional charge or license fee or otherwise), or any prohibition or restriction in any way of the exportation (whether by law, order, regulation, contractual relation, or otherwise, directly or indirectly)."

(*b*) The importer must make affidavit at the time of entry that the articles were produced in and exported directly from Canada.

(*c*) The appraiser must be satisfied and so report on examination that the articles are the product of Canada.

(*d*) The collector must be satisfied that the articles are the product of and direct importations from Canada, and that their exportation is not subject to any of the prohibitions, restrictions, or charges set forth in the said section 2.

5. The Secretary of State has been requested to instruct consular officers in Canada to add to their usual certificate on invoices a specific verification of the exporter's declaration of origin.

6. Under the provisions of said section 2 there will be admitted free of duty at the present time only such of the articles specified therein as are produced from wood cut on private lands, or on such Crown lands as are free from the restrictions, prohibitions, or charges set forth in the said section.

7. Subject to compliance with the regulations herein set forth, free entry will be granted to wood pulp, paper, and paper board valued at not more than 4 cents per pound, manufactured from:

(*a*) Wood cut on any lands, public or private, in any of the Provinces or Territories of the Dominion of Canada, except the Provinces of British Columbia, Ontario, and Quebec. This will only include the Province of New Brunswick until October 1, 1911.

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(*b*) Wood cut on private lands in the Provinces of British Columbia, New Brunswick, Ontario, and Quebec.

(*c*) Wood cut on the provincial lands of the Province of British Columbia lying east of the Cascade Range of mountains.

8. Free entry will be denied to such wood pulp, paper, and paper board manufactured from:

(*a*) Wood cut on the Crown lands of the Provinces of Ontario and Quebec, or on the provincial lands of the Province of British Columbia lying west of the Cascade Range of mountains, or on the Crown lands of the Province of New Brunswick on and after October 1, 1911.

9. Printing paper valued at 3 cents per pound or less and wood pulp, which are the products of wood cut on the lands set forth in paragraph 8, will be subject to the countervailing provisions of paragraphs 409 and 406, respectively, of the tariff act of August 5, 1909.

10. News print paper, valued at more than 3 cents per pound and not more than 4 cents per pound, and paper other than news print paper and paper board manufactured from wood pulp, or of which such pulp is the component material of chief value, valued at not more than 4 cents per pound, not including printed or decorated wall paper, which are the products of wood cut on the lands set forth in paragraph 8, will not be subject to the countervailing duties provided in paragraph 409, but will be subject to the regular duties only provided in the said paragraph.

11. Such news print paper and other paper and paper board valued at more than 4 cents per pound are not affected by this act, but remain dutiable under the appropriate provisions of the act of August 5, 1909.

12. The Dominion of Canada does not include the Province of Newfoundland nor the Territory of Labrador.

JAMES F. CURTIS, *Acting Secretary.*

(T. D. 31773—G. A. 7249.)

Iron sand.

1. IRON SAND—ABRASIVES—"THAT CAN BE USED ONLY."

Iron sand, grit, or shot, usable and actually used for purposes other than abrasives, is excluded from the provision in paragraph 133, tariff act of 1909, for "grit, shot, and sand * * * that can be used only as abrasives." To bring an article within said provision, it must have no practical utility other than as abrasives.

2. SAME—SAME—"CRUDE"—"ARTIFICIAL."

Sand, grit, or shot made of iron, ready for use as an abrasive, is neither "crude" nor "artificial" within the meaning of paragraph 432, tariff act of 1909, but is a manufactured article and dutiable as manufactures of metal under paragraph 199 of said act.

United States General Appraisers, New York, July 22, 1911.

In the matter of protests 387057, etc., of Harrison Supply Co. *et al.*, and 400949, etc., of R. C. Bowers Granite Co. against the assessment of duty by the collectors of customs at the ports of Boston and San Francisco.

Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers; COOPER, G. A., absent).

FISCHER, *General Appraiser:* The merchandise before us consists of so-called iron sand, grit, or shot. It is imported in various sizes,

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and in the form of globules and shot, of iron, about the size of buckshot, or as fine as sand. This article is apparently the same as that referred to in the case of the Harrison Supply Co., (171 Fed. Rep., 406: T. D. 29767, affirming 164 Fed. Rep., 155; T. D. 29207).

Duty was assessed thereon at the rate of 1 cent per pound under the provisions of paragraph 133, tariff act of 1909, which reads as follows:

Grit, shot, and sand made of iron or steel, that can be used only as abrasives. * * *

The importers claim that the merchandise is dutiable at 10 per cent ad valorem under paragraph 432, or, in the alternative, at 45 per cent ad valorem under paragraph 199, as manufactures of metal not specially provided for, or free under paragraph 683, as sand. The claim most seriously relied on is that under paragraph 432, the pertinent provisions of which read:

Crude artificial abrasives, ten per cent ad valorem.

There is no dispute but that the imported goods are abrasives, known as grit, shot, or sand, but it is urged as to certain varieties included in these importations, that they are used and usable for a variety of purposes other than as abrasives and are especially exempted for that reason from paragraph 133, because of the express words used therein limiting the scope of said paragraph to grit, shot, or sand *that can be used only as abrasives.* In order to bring an article within a tariff designation which is limited by express terms to a particular ultimate use, and *to only such* use, it is quite clear that the article must have no practical utility for any other commercial use. There can be no question of the soundness of this theory, and accordingly such of the varieties which appear from the evidence to be used in trade for other purposes than as abrasives are excluded from paragraph 133. The classification of such excluded goods must be sought for elsewhere in the act. This brings us to the query: Are these articles, used for other purposes than as abrasives, dutiable as "crude artificial abrasives?"

The words "crude artificial abrasives" are certainly peculiar, for it is rather paradoxical to speak of anything which is the product of manufacture as being "crude." The particles of grit or sand are made from the liquid metal by the means of a steam jet which scatters the metal into the particles of various sizes, which are collected, dried, and separated into various grades by passing them through sieves. In this form the article is completed, requires nothing further to be done to it, and is ready for use as an abrasive or for such other use for which it may have been imported. This finished product, divided into grades more or less uniform in size and completely manufactured or fitted for use, is not "crude" within the meaning of the paragraph in question. Note Myers & Co. *v.* United States (T. D. 31531).

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The Standard Dictionary defines "crude," as—

1. In a state needing preparation for use in manufacture or in mercantile exchange; not refined; raw; as * * * *crude* material; a relative term.

2. Not having reached its complete or mature form; unripe; immature.

3. Lacking in completeness of form or arrangement; exhibiting roughness; incomplete.

It can not be said that the grit or sand is incomplete or unfinished, for in its imported form it is usable, and is used by the ultimate consumer as received. It is true that an article may be in an advanced form, and still be "crude" in a tariff sense of a particular statute. Roessler case (94 Fed. Rep., 822). But that is not the case here. The grit and sand is graded and screened, and so put up in a commercial form, which fact would go to show that it is not the crude form of the article. Even if this could be considered as a crude abrasive, it is not as we view it a crude "artificial" abrasive. The imported articles are of metal converted into their present form by a process of manufacture, and they do not simulate any other article known to science or commerce as an abrasive. Metal is an abrasive substance, and this article, though manufactured, is entirely of metal. It is therefore an abrasive and not an artificial abrasive. It is not made to imitate an abrasive, and would be considered an abrasive, unless it can be said that all things created by man are "artificial." The Standard Dictionary defines the word "artificial" as:

1. Produced or composed by art rather than by nature, but of the same materials, and with the same or nearly the same result; manufactured; distinguished from imitation; as, artificial rubies * * *; artificial ice.

2. Produced by art to imitate nature, from different materials and with an inferior result; imitation; as, artificial flowers; artificial diamonds.

What Congress undoubtedly had in mind as a crude artificial abrasive was an article like "carborundum" in the form in which it leaves the electric furnace. That article is a compound of carbon and silicon made in an electric furnace, and is a substitute for emery and corundum.

The record alludes to so-called angular grit, an article made by crushing iron shot, and concedes that such material is only suitable as an abrasive, but as that particular kind of grit is not covered by these protests and not included in the importations, we can not pass on the dutiability of such material. There is some testimony in the record to show that grades 4 C and 4 F are used only as abrasives.

We hold the merchandise here in question with the exception of such as would be included within the grades 4 C and 4 F, referred to, dutiable under paragraph 199, tariff act of 1909, as manufactures of metal not specially provided for. That claim in the protests is sustained to the extent indicated, and in all other respects the said protests are overruled. Reliquidation will follow accordingly.

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(T. D. 31774.)

Abstracts of decisions of the Board of General Appraisers.

Board 1.—Sharretts, McClelland, and Chamberlain. *Board 2.*—Fischer, Howell, and Cooper. *Board 3.*—Waite, Somerville, and Hay.

BEFORE BOARD 1, JULY 17, 1911.

No. 26135.—SHELL CAMEOS.—Protests 327949, etc., of L. Heller & Son (New York). Opinion by Sharretts, G. A.

Protests sustained as to shell cameos on the authority of G. A. 6936 (T. D. 30068).

No. 26136.—CIGARETTE CASES—SMOKERS' ARTICLES.—Protest 421918 of Metropolitan Tobacco Co. (New York). Opinion by Sharretts, G. A.

Cigarette cases of white metal, classified as articles of personal adornment under paragraph 448, tariff act of 1909, were held dutiable as smokers' articles (par. 475), as claimed by the importers. G. A. 7102 (T. D. 30942) followed.

No. 26137.—SEGER CONES.—Protest 308003 of F. B. Vandegrift & Co. (New York).

Merchandise invoiced as "fire clay firing trials" and classified as earthenware under paragraph 95, tariff act of 1897, was claimed to be dutiable as nonenumerated manufactured articles (sec. 6).

SHARRETTS, *General Appraiser:* * * * These articles are substantially the same in character and use as the so-called seger cones passed upon by this board in Abstract 24826 (T. D. 31316), differing therefrom only in that they are straight bars, whereas those the subject of the decision cited were conical in form. On the authority of Abstract 24826, *supra*, and the authorities there cited we sustain the protest and reverse the collector's decision.

No. 26138.—PROTESTS OVERRULED.—Protest 457794–35229 of International Forwarding Co. (Chicago), protest 419271 of Reed Bros. & Co. (Cleveland), and protests 244746, etc., of H. B. Claflin Co., protest 376500 of Morimura Bros., and protests 472965, etc., of Strauss Bros. & Co. et al. (New York). Opinions by Sharretts, G. A.

Protests overruled for want of merit.

No. 26139.—APRON LEATHER.—Protests 504015, etc., of L. M. Bowes (Boston). Opinion by McClelland, G. A.

Protests sustained as to apron leather. United States *v.* Richards (T. D. 31548) followed.

No. 26140.—PROTEST OVERRULED.—Protest 368450 of D. De Bernardi & Co. et al. (San Francisco). Opinion by McClelland, G. A.

Protest overruled for want of merit.

BEFORE BOARD 2, JULY 17, 1911.

No. 26141.—PROTESTS OVERRULED.—Protests 427621, etc., of William Larzelere & Co. (Philadelphia). Opinion by Fischer, G. A.

Protests overruled for want of merit.

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BEFORE BOARD 3, JULY 17, 1911.

No. 26142.—EVERGREEN SEEDLINGS.—Protests 451386, etc,, of P. Ouwerkirk et al. (New York). Opinion by Waite, G. A.

Merchandise classified as nursery stock under paragraph 264, tariff act of 1909, was held free of duty as evergreen seedlings (par. 668). Protests sustained.

No. 26143.—PROTESTS OVERRULED.—Protests 479597, etc., of Kwong Tai Chong et al., and protests 474196, etc., of Ying Chung et al. (New York), protest 456814 of W. White (Port Huron), and protests 429287, etc., of Bon Tsee Tong & Co. et al. (San Francisco). Opinions by Waite, G. A.

Protests overruled for want of merit.

No. 26144.—FLATTENING STONES.—Protests 447818, etc., of F. B. Vandegrift & Co. (Philadelphia).

HAY, *General Appraiser:* The merchandise here in question is invoiced as "flattening stones." It was assessed for duty as articles or wares composed wholly or in chief value of earthy or mineral substances under paragraph 95 of the tariff act of 1909, and is claimed to be dutiable under paragraph 84, 92, 90, or 480, or free of duty under paragraph 626.

The importers testified that these stones are used in flattening window glass into sheets from the cylindrical form in which it is first made. They also testified that similar stones are manufactured in this country from two kinds of clay. From this testimony the assessment is apparently correct; at least the presumption in favor of its correctness has not been overcome by the testimony. The protests are therefore overruled. Tamm's case, G. A. 7235 (T. D. 31705), followed.

No. 26145.—PETROLEUM PRODUCTS.—Protests 490207, etc., of Lehn & Fink et al., and protests 391379, etc., of L. Sonneborn Sons (New York). Opinions by Hay, G. A.

Protests sustained as to petroleum products. G. A. 6405 (T. D. 27507) followed.

No. 26146.—SILEX LINING—FLINT STONES.—Protest 491067, etc., of Hawley & Letzerich et al. (Galveston).

HAY, *General Appraiser:* The commodity here in question, invoiced as "silex lining," was assessed as articles or wares composed of earthy or mineral substances under paragraph 95 of the tariff act of 1909, and is claimed to be free of duty as "flint stones, unground," under paragraph 569. Other claims are made in the protests, but they were not relied upon at the hearing.

From the collector's report the merchandise appears to be identical with that passed upon in Bunker's case, Abstract 9960 (T. D. 27087), where it was held to be free of duty under the paragraph of the act of 1897 relating to flint stones. It is apparently not a composition, but flint stones themselves, and is therefore not included within the scope of paragraph 95 of the act of 1909.

On the authority of Tamm's case, G. A. 7235 (T. D. 31705), and the decisions therein cited, the protests are sustained and the collector directed to reliquidate the entries, admitting the merchandise free of duty as "flint stones, unground," under paragraph 569.

No. 26147.—CLERICAL ERROR.—Protest 447845 of the Times Mirror Co. (Los Angeles). Opinion by Hay, G. A.

The board sustained a claim for relief on the ground of clerical error.

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No. 26148.—Ground Cornwall Stone.—Protests 451298, etc., of Hammill & Gillespie (New York). Opinion by Hay, G. A.

Ground Cornwall stone, classified as an article composed of mineral substances under paragraph 95, tariff act of 1909, was held dutiable as a nonenumerated manufactured article (par. 480). Protests sustained on the authority of G. A. 7235 (T. D. 31705).

No. 26149.—Protests Overruled.—Protest 503202 of Jones, McDuffee & Stratton Co. (Boston), protest 504065 of Sherwin-Williams Co. (Newark), protests 454103, etc., of Arbuckle Bros. et al., protests 455344, etc., of Eimer & Amend, protests 490239, etc., of Lunham & Moore et al., and protests 490272, etc., of Nathan Manufacturing Co. et al. (New York), and protests 414258, etc., of L. Sonneborn Sons (Philadelphia). Opinions by Hay, G. A.

Protests overruled for want of merit.

Before Board 1, July 19, 1911.

No. 26150.—Articles of Personal Adornment—Vanity Cases.—Protest 444400 of B. Altman & Co. (New York). Opinion by Sharretts, G. A.

Vanity cases made of brass, gilded, which were classified under paragraph 448, tariff act of 1909, as articles of personal adornment, were held dutiable as manufactures of metal (par. 199). Protest sustained on the authority of G. A. 7129 (T. D. 31089).

No. 26151.—Alumina Drops.—Protest 381301 of American Express Co. (New York).

Sharretts, *General Appraiser:* Based upon the appraiser's report and the official sample in the case, we find the merchandise to be pyramidal drops composed of pure alumina, from which artificial or scientific emeralds or olivines are cut. Return for duty was made as a nonenumerated manufactured article at 20 per cent ad valorem under section 6 of the tariff act of 1897.

Said merchandise is not provided for in any paragraph of the act of 1897, and in material, quality, texture, or intended purpose of use it more clearly resembles precious stones cut but not set, provided for in paragraph 435, than any other article subject to duty under that act.

The importers having made a corresponding claim, we sustain the protest, the collector's decision being reversed to the extent indicated.

No. 26152.—Hatpins.—Protest 427417 of Dieckerhoff, Raffloer & Co. (New York). Opinion by Sharretts, G. A.

Hatpins set with paste imitating jet and classified under paragraph 448, tariff act of 1909, as articles of personal adornment, were claimed to be dutiable under paragraph 109 as manufactures of glass. The collector expressed willingness to reliquidate accordingly. Protest sustained.

No. 26153.—Gauge Glasses.—Protest 387593 of Fensterer & Ruhe (New York). Opinion by Sharretts, G. A.

Prismatic gauge glasses classified as articles of ground glass under paragraph 100, tariff act of 1897, were held dutiable as strips of glass ground to a prismatic form (par. 110), as claimed by the importers.

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No. 26154.—HATPINS—ARTICLES OF PERSONAL ADORNMENT.—Protests 403705, etc. of Benjamin Stearns & Co. (New York). Opinion by Sharretts, G. A.

Hatpins set with glass or paste imitating jet, and classified under paragraph 448, tariff act of 1909, as articles of personal adornment, were held dutiable as manufactures of glass, paste, or metal (par. 109 or 199). Protest 403705 sustained. United States *v.* Beierle (T. D. 31506) followed.

No. 26155.—CUT-PASTE ARTICLES.—Protests 412806–32013, etc., of Charles D. Stone & Co. (Chicago), and protest 376187 of Hewlett-Robin Co., and protest 422366 of L. Metzger & Co. (New York). Opinions by Sharretts, G. A.

Protests sustained as to cut-paste articles on the authority of G. A. 6995 (T. D. 30444).

No. 26156.—PROTESTS OVERRULED.—Protest 447738–34610 of Gosta Marcus (Chicago), protests 455055, etc., and protests 473774, etc., of American Bead Co. et al., protest 388638 of Bamberger, Stern & Co., protests 261957, etc., and protests 251543, etc., of Bloomingdale Bros., protest 466914 of R. F. Downing & Co., protest 472456 of F. William Gertzen Co., protest 472228 of P. C. Kuyper Co., protest 308258 of Lazarus, Rosenfeld & Lehmann, protests 476223, etc., of Stern Bros. et al., and protests 474191, etc., of C. Wilderman Co. et al. (New York), and protest 470581 of Bausch & Lomb Optical Co. (Rochester). Opinions by Sharretts, G. A.

Protests overruled for want of merit.

BEFORE BOARD 2, JULY 19, 1911.

No. 26157.—DRAWPLATES—WORTLES—FORGINGS.—Protests 406105, etc., of Newman-Andrew Co. et al. (New York).

FISCHER, *General Appraiser:* The merchandise here in question consists of wire drawers' plates and wortles. These plates and wortles are forged from steel to their finished state, have holes punched through of diminishing diameters, and are used for drawing wire. The collector assessed duty on the merchandise at the rate of 45 per cent ad valorem under paragraph 199, tariff act of 1909, and it is claimed that said forged articles of steel are dutiable at 30 per cent ad valorem, under paragraph 123 of said act, as forgings of steel.

The plates and wortles are of the precise kind passed upon by the United States Court of Customs Appeals in the Newman-Andrew case (T. D. 31570), and are such as were held classifiable under paragraph 127, tariff act of 1897, as "forgings of steel." Paragraph 123, tariff act of 1909, limits to classification thereunder such forgings as are not processed beyond the original forging, the provision for "forgings" being restricted by the following clause:

But not machined, tooled, or otherwise advanced in condition by any process or operation subsequent to the forging process.

In the Newman-Andrew case the court found that drawplates and wortles similar to those we have here before us had no other than the forging processes applied in their making. We understand that no different state of facts obtains as to the articles here before us, and we accordingly find that the drawplates and wortles have been advanced to their completed state by essentially forging processes, and we hold that they are not excluded from paragraph 123 by reason of the operation of the clause of restriction. We sustain the claim in the protests that the merchandise is dutiable at 30 per cent under paragraph 123, tariff act of 1909, as forgings of steel. * * * Reliquidation will follow on drawplates and wortles as noted.

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No. 26158.—Paper Measuring Tapes—Printed Matter—Protests 445130–34257, etc., of Gallagher & Ascher (Chicago).

Fischer, *General Appraiser:* The merchandise consists of measuring tapes of paper. The tapes are about one-half inch in width and are printed with subdivisions of a yard indicating eighths. Duty was assessed on the goods at the rate of 35 per cent ad valorem under that part of paragraph 415, tariff act of 1909, which provides for paper cut into strips. The claim raised by the protests is that the paper measuring tapes are classifiable under paragraph 416 of said act as printed matter.

These tapes are not of the same nature of the articles covered by paragraph 416, viz, books, pamphlets, photographs, maps, etc., and we conclude that they are not classifiable as "printed matter." The paper is printed, but such printing merely serves to designate length. The cutting of the paper into narrow widths and the division thereof into eighths of a yard form a complete article known as a measuring tape. It would appear to us that an article of this kind is dutiable properly as a "manufacture of paper," but as the rate assessed is likewise applicable to goods classifiable as manufactures of paper the protestants have no ground for complaint. The protests are overruled.

No. 26159.—Magneto Coil Condensers—Automobile Parts.—Protest 494771 of Packard Motor Car Co. (Detroit). Opinion by Fischer, G. A.

Magneto coil condensers classified as finished parts of automobiles under paragraph 141, tariff act of 1909, were held dutiable as manufactures of mica (par. 91). Protest sustained on the authority of Abstract 24259 (T. D. 31070).

No. 26160.—Printing Paper—"Normandy Vellum."—Protests 480628, etc., of American Trading Co. et al. (New York). Opinion by Fischer, G. A.

Paper classified as japan or imitation japan paper under paragraph 413, tariff act of 1909, was held dutiable as book printing paper (par. 409). Protests sustained on the authority of Abstract 25317 (T. D. 31498).

No. 26161.—Coated Wrapping Paper.—Protest 495656 of L. Henry & Co. (New York). Opinion by Fischer, G. A.

Protest sustained as to coated wrapping paper on the authority of Abstract 24510 (T. D. 31182).

No. 26162.—Ornaments.—Protest 407337 of J. Loewenthal & Co. (New York). Opinion by Fischer, G. A.

Protest sustained as to silk sectional ornaments. United States *v.* Hilbert (171 Fed. Rep., 69; T. D. 29815) followed.

No. 26163.—Iron Drums.—Protests 400577, etc., of William H. Masson (Baltimore), protest 433995 of Central Vermont Railway Co. (Burlington), protests 440729, etc., of Peters, White & Co. (New York), protests 420070, etc., of Peters, White & Co. (Philadelphia), protest 410501 of Balfour, Guthrie & Co. (Portland, Oreg.), and protests 435985, etc., of Parrott & Co. et al. (San Francisco). Opinions by Fischer, G. A.

Sheet-iron drums containing caustic potash, calcium carbide and caustic soda, classified as cylindrical or tubular vessels under paragraph 151, tariff act of 1909, were held free of duty as the usual containers of free merchandise or at the rate applicable to their contents. United States *v.* Braun (T. D. 31596) followed.

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No. 26164.—PROTESTS OVERRULED.—Protest 497474-36356 of Sears, Roebuck & Co. (Chicago), protest 231278 of E. L. Bruce (Denver), protests 373518, etc., of F. A. Bonnet (Eagle Pass), protests 447100-3619, etc., of E. I. Du Pont de Nemours Powder Co., and protests 460708-3663, etc., of Illinois Central Railroad Co. (New Orleans), protests 433794, etc., of Badische Co., protests 448285, etc., of Eugene Dietzgen & Co., protests 497194, etc., of Hensel, Bruckmann & Lorbacher et al., protests 401938, etc., of H. A. Metz & Co. et al., protests 499995, etc., of Maurice O'Meara Co., protest 500526 of A. H. Post & Co., protests 403405, etc., of Roessler & Hasslacher Chemical Co. et al., and protests 497964, etc., of United Art Publishing Co. et al. (New York), protests 429714, etc., of Cudahy Packing Co. (Omaha), protests 491658, etc., of Philip Halzell, and protest 491120 of F. B. Vandegrift & Co. (Philadelphia), protest 493708 of R. J. Alther (San Francisco), and protests 431253, etc., of E. I. Du Pont de Nemours Powder Co. (Wilmington). Opinions by Fischer, G. A.

Protests overruled for want of merit.

No. 26165.—SILK EMBROIDERY.—Protest 422754 of J. Loewenthal & Co. (New York). Opinion by Howell, G. A.

Merchandise classified as artificial silk embroidery under paragraph 405, tariff act of 1909, was held dutiable as silk embroidery (par. 402), the collector expressing willingness to reliquidate accordingly.

No. 26166.—MALINE NETS.—Protests 473349, etc., of Shoninger Bros. et al. (New York). Opinion by Howell, G. A.

Protests sustained as to Maline nets on the authority of Abstract 24701 (T. D. 31 .

No. 26167.—HATTERS' PLUSH.—Protest 414131 of A. L. Simon & Co. (New York). Opinion by Howell, G. A.

Protest sustained as to hatters' plush on the authority of G. A. 7067 (T. D. 30791).

No. 26168.—ELASTIC BELTINGS.—Protests 423113, etc., and protest 464212 of Baum, Cohen & Shire, protests 487986, etc., of M. L. Eckstein & Co., and protests 463034, etc., of H. Wolff & Co. (New York). Opinions by Howell, G. A.

Merchandise classified as beltings in chief value of artificial silk under paragraph 405, tariff act of 1909, was held dutiable in part as cotton beltings (par. 349) and in part as manufactures of rubber (par. 463). Protests sustained. Note Abstract 25606 (T. D. 31616).

No. 26169.—ELASTIC WEBBING.—Protest 496208 of E. Horrax (New York). Opinion by Howell, G. A.

Merchandise classified as webbing in chief value of artificial silk under paragraph 405, tariff act of 1909, was held dutiable as manufactures of rubber (par. 463). Note Abstract 25606 (T. D. 31616).

No. 26170.—PROTESTS OVERRULED.—Protest 460238-3652 of Julius C. Wolff & Co. (New Orleans), and protests 485226, etc., of Abraham & Straus, protests 409555, etc., of Edwin Horrax et al., protest 419669 of Joseph, protests 469756, etc., of Kern, Loewi & Mendel et al., protest 484378 of L. Mendelson Co., protests 462657, etc., of C. Willenborg & Co. et al., and protest 453023 of P. K. Wilson & Sons (New York). Opinions by Howell, G. A.

Protests overruled for want of merit.

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BEFORE BOARD 3, JULY 19, 1911.

No. 26171.—PROTESTS OVERRULED.—Protests 449773, etc., of C. C. Abel & Co. et al. (New York). Opinion by Waite, G. A.

Protests overruled for want of merit.

No. 26172.—PROTESTS OVERRULED.—Protest 497986 of Kildall Fish Co. (Minneapolis). Opinion by Somerville, G. A.

Protest overruled for want of merit.

BEFORE BOARD 1, JULY 22, 1911.

No. 26173.—BEADED ARTICLES.—Protests 422554-32448, etc., of G. W. Sheldon & Co. (Chicago). Opinion by Sharretts, G. A.

Ladies' hand bags or purses composed in chief value of beads and classified as articles of personal adornment under paragraph 448, tariff act of 1909, were held dutiable as articles in chief value of beads (par. 421). Protests sustained.

No. 26174.—MILLINERY ORNAMENTS.—Protests 371011, etc., of Bayer & Pretzfelder Co. (New York). Opinion by Sharretts, G. A.

Protests sustained as to millinery ornaments and other articles on the authority of G. A. 6139 (T. D. 26679), G. A. 6995 (T. D. 30444), G. A. 7053 (T. D. 30731), and Abstract 5635 (T. D. 26248).

No. 26175.—WILLOW BASKETS.—Protests 472767, etc., of Swayne, Hoyt & Co. et al. (San Francisco). Opinion by McClelland, G. A.

Baskets composed of willow and classified as manufactures of willow or willow furniture under paragraph 212, tariff act of 1909, were held dutiable as "baskets * * * of * * * wood" (par. 214). Protests sustained. Brody *v.* United States (T. D. 31573) and Krauss *v.* United States (T. D. 31574) followed.

BEFORE BOARD 2, JULY 22, 1911.

No. 26176.—CORK FLOATS.—Protests 418133, etc., of Enterprise Manufacturing Co. et al. (Cleveland). Opinion by Fischer, G. A.

Protests sustained as to cork floats on the authority of Fenton *v.* United States (T. D. 31546).

No. 26177.—PROTESTS OVERRULED.—Protest 500847 of Sinclair, Rooney & Co. (Buffalo), protests 489427-37183, etc., of American Express Co. et al. (Chicago), protest 478527 of Kinney & Levan (Cleveland), protests 450416, etc., of Benziger Bros., protests 500644, etc., of H. Bischoff & Co. et al., protests 500409, etc., of George Borgfeldt & Co., protests 291025, etc., of Central Stamping Co. et al., protests 501122, etc., of L. Dion et al., protests 473841, etc., of M. L. Eckstein & Co., protests 357479, etc., of P. J. Kenedy & Sons et al., protests 430993, etc., of Knauth, Nachod & Kuhne et al., and protests 486066, etc., of Paul C. Zuhlke et al. (New York), and protests 496818, etc., of Butler Bros. et al., and protests 418966, etc., of C. H. Wyman & Co. (St. Louis). Opinions by Fischer, G. A.

Protests overruled for want of merit.

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No. 26178.—Hatters' Plush—Plush not Exclusively for Hats.—Protests 427361, etc., of Comey & Johnson Co. (Cleveland).

Howell, *General Appraiser:* A decision was rendered in this case by the board on May 5, 1911, Abstract 25526 (T. D. 31568), and on the record before us the protests were sustained. An application by the Government for a rehearing of the protests was granted by the board, and the protests were set for hearing on July 13, 1911. On this latter date the Government introduced the testimony of three witnesses, each of whom has been engaged in importing and selling black hatters' plush in this country for over 18 years. The testimony of these witnesses is unanimously to the effect that the goods here in question, represented by Exhibits 1 and 2, are not such qualities of black hatters' plush as are used in this country for making men's hats.

The only testimony offered by the importers was that of the president of the importing company, Mr. George P. Comey, who testified that the plushes in question were used by his company in making *women's* hats. He, however, produced two men's hats, which he testified were made from samples of the plushes here in question.

It appears from the testimony and an inspection of the exhibits that one of these hats is unquestionably such an inferior article that it would not be salable in the markets of this country. The other hat appears to be a salable article. But testimony of this character to the effect that it is possible to make a hat out of a given quality of plush is not sufficient to justify the classification of the merchandise under paragraph 477. To bring the merchandise within the provisions of that paragraph it must be shown that the article is commercially known as hatters' plush and is recognized in the trade as a standard article which is used in the manufacture of men's hats to the exclusion of other similar fabrics. G. A. 7067 (T. D. 30791).

We think the testimony in this case indicates that the plushes in question belong to that class of low-grade plushes which we have heretofore repeatedly held were not used exclusively for making men's hats. G. A. 3273 (T. D. 16577) and Abstract 22998 (T. D. 30529).

There is some testimony in the case to the effect that plushes of this character are used for making men's hats in Europe, but, of course, this is entirely irrelevant, as the provision for hatters' plush "such as is used exclusively for making men's hats" has reference to the use of the article in this country.

We find that the goods in question are not such plushes as are used exclusively for making men's hats.

The protests are overruled.

No. 26179.—Maline Nets.—Protests 484972, etc., of W. J. Urchs et al. (New York). Opinion by Howell, G. A.

Protests sustained as to Maline nets on the authority of Abstract 24701 (T. D. 31255).

No. 26180.—Horsehair Braids—Horsehair Hats.—Protests 372141, etc., of Aitken, Son & Co. et al., protests 230314, etc., of R. H. Macy & Co. et al., and protests 222542, etc., of J. A. Paterson & Co. et al. (New York). Opinions by Howell, G. A.

Braids and hats in chief value of horsehair, classified under paragraph 390, tariff act of 1897, were held dutiable as braids and hats of straw (par. 409). United States *v.* Rheims (175 Fed. Rep., 778; T. D. 30226) followed.

Before Board 3, July 22, 1911.

No. 26181.—Protests Overruled.—Protests 435997, etc., of Yee Chong Lung & Co. et al. (San Francisco). Opinion by Waite, G. A.

Protests overruled for want of merit.

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No. 26182.—Tiles.—Protests 478952, etc., of Delft Co. (New York). Opinion by Hay, G. A.

Protests sustained as to tiles on the authority of Abstract 24630 (T. D. 31236).

No. 26183.—Toy Fans.—Protests 492254, etc., of Scheuer & Co. (New York). Opinion by Hay, G. A.

Protests sustained as to toy fans. Morimura *v.* United States (175 Fed. Rep., 887; T. D. 30129) followed.

No. 26184.—Tea Coverings.—Protests 496282, etc.. of Tuck High (New York). Opinion by Hay, G. A.

Paper boxes covered with colored cotton fabrics were held free of duty as the usual containers of tea. Protests sustained.

No. 26185.—Powdered Talc.—Protest 489482 of Hawley & Letzerich (Galveston), protest 445988 of Alexander Murphy & Co. (Philadelphia), and protests 449749 of Fritze Lundt & Co. Successors (San Juan). Opinions by Hay, G. A.

Protests sustained as to powdered talc on the authority of Salomon *v.* United States (T. D. 31635).

No. 26186.—Clerical Error.—Protest 466348 of Gordon & Ferguson (St. Paul). Opinion by Hay, G. A.

The board sustained a claim for relief on the ground of clerical error.

No. 26187.—Personal Effects.—Protest 466459 of Evelyn J. Thompson (Minneapolis).

Hay, *General Appraiser:* In this case it appears that the personal baggage of a returning traveler, through some delay, did not reach the dock in time to come on the same steamer with her. It arrived by a later boat of the same line and duty was therefore assessed. From the evidence it appears that the articles in question are wearing apparel and are entitled to free entry under paragraph 709 of the tariff act of 1909, as claimed in the protest. See Wyman's case, G. A. 5109 (T. D. 23631). The protest is sustained.

No. 26188.—Ground Flint—Cornwall Stone—Feldspar.—Protests 472740, etc., of Carnegie Brick & Pottery Co. et al. (San Francisco). Opinion by Hay, G. A.

Ground flint, Cornwall stone, and feldspar classified under paragraph 95, tariff act of 1909, relating to articles composed of mineral substances, were held dutiable as nonenumerated manufactures (par. 480). Protests sustained.

No. 26189.—Protests Overruled.—Protests 474207, etc., of Anna H. Carter et al. (Boston), protests 494763, etc., of Champion Ignition Co., and protests 449727, etc., of Packard Motor Car Co. (Detroit), protest 489490 of L. Jonas & Co. (Nashville), protest 451523 of John W. Hughes, protests 490661, etc., of A. T. Otto, and protest 492781 of William H. Stiner & Son (New York), protests 474546, etc., of George Borgfeldt & Co. (Philadelphia), and protests 476909, etc., of De Fremery & Co. et al. (San Francisco). Opinions by Hay, G. A.

Protests overruled for want of merit.

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(T. D. 31775.)

Sulphur.

Sulphur mined in Hokkaido dutiable as refined sulphur at the rate of $4 per ton under paragraph 81, tariff act of 1909.

TREASURY DEPARTMENT, *July 25, 1911.*

SIR: The department is in receipt of information that there is a conflict of opinion among various customs officers in regard to the classification of sulphur exported from Hakodate, Japan.

In this regard, I have to advise you that the department is in receipt of a letter from the confidential agent at Yokohama, dated May 29, 1911, in which he states that upon an investigation of this matter, he finds that there are a number of sulphur mines in the Hokkaido, the northernmost island of Japan, but that the two largest were located 25 miles east of Hakodate; that these two mines are typical of all the others in the Hokkaido, furnishing most of the sulphur for shipment to America; that the ore is found in veins and as mined contains from 35 to 55 per cent of sulphur; that the ore is taken from the mine almost at the top of the mountain and sent down to the furnace by a gravity railway, a distance of about 1 mile, and that it is roasted in the furnaces and the result is from 90 to 97 per cent of pure sulphur, the remainder being about 3 per cent arsenic and earthy matters, with also, at times, traces of selenium. He further states that there can be no question that all the sulphur ore mined in the Hokkaido goes through the same process.

In view of the report of the confidential agent, the department is of the opinion that the sulphur, the product of these mines, is properly dutiable as sulphur, refined, at the rate of $4 per ton under paragraph 81 of the tariff act, and you are accordingly directed to assess duty upon future importations thereof under said paragraph 30 days from the date hereof.

Respectfully, JAMES F. CURTIS,
(67678.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *Portland, Oreg.*

(T. D. 31776.)

Bagging.

Classification of old waste gunny bagging, burlaps, and rags.

TREASURY DEPARTMENT, *July 26, 1911.*

To officers of the customs and others concerned:

Under date of March 30, 1911, G. A. 7149 (T. D. 31447), the Board of United States General Appraisers sustained the protest of the importers that certain old waste gunny bagging was entitled to admis-

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sion free of duty as rags, but overruled the contention of the importers that merchandise of the character the subject of the decision was free of duty as paper stock. This case was made by the Government after a very exhaustive investigation of the subject, and while the department has concluded to acquiesce in the decision that old fragments of waste bagging, full of holes, irregular in size, and presenting the appearance of being ragged and torn, are free of duty, it deems it necessary, in view of the decision of the board, to publish the following instructions, illustrated by half-tone engravings [see Appendix], in regard to the proper classification of merchandise of this general character.

Exhibits 1, 2, and 3 consist of pieces of old bagging of various sizes, some of regular width and others narrow but of similar character, specially designated compress patches. These pieces are extensively used as patchings for cotton bales; are of the character of the selected sides in class 1 of the decision of the Board of United States General Appraisers, G. A. 6603 (T. D. 28202), and are accordingly dutiable as waste under paragraph 479 of the tariff act at the rate of 10 per cent ad valorem.

Exhibit 4 represents old bagging as removed from the bales, similar to that described in class 2 of T. D. 28202, and is in such condition that a considerable portion can be used as covering or patchings for cotton bales, and is also dutiable as waste at the rate of 10 per cent ad valorem under paragraph 479.

Exhibits 5 and 6 represent old bagging as removed from the bales, but so badly worn and torn as to be unfit for manufacture into pieced bagging or patches for cotton bales, and small pieces worn and unfit for use as covering or patches. These exhibits are free of duty as rags under paragraph 660 of the tariff act, following the decision of the Board of United States General Appraisers in T. D. 31447.

Exhibits 7 and 8 are sugar bags, cut and torn, but of sound material and used for making coverings for cotton bales, and, following the decision of the board, Abstract 23742 (T. D. 30800), are dutiable as waste under paragraph 479 at the rate of 10 per cent ad valorem.

Exhibits 9, 10, and 11 represent old burlap cloth and burlap bags and consists of the larger pieces of such old material, which, though of a size which might be suitable for numerous purposes other than paper making, are in such a condition from long use and exposure as to be unfit for any purpose other than for paper making. Merchandise of this character is entitled to admission free of duty as paper stock under paragraph 644 of the tariff act.

JAMES F. CURTIS, *Assistant Secretary.*

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(T. D. 31777.)

Wearing apparel and other personal effects.

Wearing apparel and other personal effects taken abroad by residents of the United States may be brought back by them free of duty, whether or not belonging to the persons taking same abroad and whether or not intended for use as personal effects.

TREASURY DEPARTMENT, *July 26, 1911.*

SIR: The department is in receipt of your letter of the 13th instant, further in relation to the free entry of a necklace of foreign origin taken abroad by a friend of the owner for the purpose of taking up with the dealer from whom it was purchased some questions of doubt as to the metals from which it was manufactured.

It appears that the said necklace was purchased in Geneva, Switzerland, and brought to this country by the owner on the steamship *Kronprinzessin Cecile*, and the duties accruing were paid thereon; that the said necklace was taken abroad for the purpose above stated and brought back to this country on the steamship *Olympic*, which arrived on June 21 last.

Paragraph 709 of the tariff act provides that in case of residents of the United States returning from abroad all wearing apparel and other personal effects taken by them out of the United States shall be admitted free of duty, without regard to their value, upon their identity being established. The department does not desire to limit the application of this provision of law in any manner not absolutely required by the words of the statute. Personal effects which are taken out of the United States to foreign countries by residents of the United States and accompanying such residents upon their return from abroad are entitled to be admitted free of duty, whether or not they belong to the persons who took them out and whether or not they are used by them as personal effects for the purposes of the journey, provided, of course, their identity is established in accordance with the provisions of said paragraph.

Respectfully, JAMES F. CURTIS,
(88930.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 31778.)

Date of exportation—Merchandise from Calcutta.

Date of sailing of vessels will be noted on triplicate copy of invoice by the consul general.

TREASURY DEPARTMENT, *July 26, 1911.*

To collectors and other officers of the customs:

The department is advised by the Secretary of State that the consul general at Calcutta, India, will, from and after June 15, 1911, note on

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the triplicate invoice the date on which the vessel carrying the merchandise covered by such invoice actually sails from Calcutta.

When entry is made of merchandise shipped from Calcutta, the triplicate invoice should be attached to the invoice used on entry and transmitted to the appraiser for his information in appraising the merchandise.

If no notation of the date of sailing appears on the invoice, and the date of exportation is not otherwise shown, the date will be furnished to the appraiser by the department from the official bulletin of the Indian Government, a copy of which is furnished by the said consul general.

JAMES F. CURTIS, *Assistant Secretary.*

(T. D. 31779.)

Drawback on various medicinal preparations, including Pain Killer.

Drawback on various medicinal preparations, including Pain Killer, manufactured by the Davis & Lawrence Co., of New York City, with the use of domestic tax-paid alcohol.

TREASURY DEPARTMENT, *July 28, 1911.*

SIR: Drawback is hereby allowed under section 5 of the tariff act of August 5, 1909, and the regulations promulgated thereunder (T. D. 31695 of June 16, 1911), on various medical preparations, including Pain Killer, manufactured by the Davis & Lawrence Co., of New York City, with the use of domestic tax-paid alcohol.

The allowance should not exceed the quantities set forth in the manufacturers' sworn statements now on file at your port in connection with T. D. 27620 of September 27, 1906, and T. D. 28826 of March 9, 1908.

Respectfully, R. O. BAILEY,
(89017.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 31780.)

Drawback on liquid quebracho extract and liquid myrabolam extract.

Drawback on liquid quebracho extract manufactured with the use of imported solid quebracho extract, and on liquid myrabolam extract manufactured with the use of imported solid myrabolam extract, by the Argam Tannin Co., of New York City.—T. D. 30951 of September 27, 1910, revoked.

TREASURY DEPARTMENT, *July 28, 1911.*

SIR: Drawback is hereby allowed under section 25 of the tariff act of August 5, 1909, and the drawback regulations promulgated there under (T. D. 31695 of June 16, 1911), on liquid quebracho extract manufactured by the Argam Tannin Co., of New York, with the use of

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imported solid quebracho extract, and on liquid myrabolam extract manufactured by the same company with the use of imported solid myrabolam extract.

The manufacturer shall keep a record showing the batch number, date of manufacture, the degree of density, gross, tare, and net weight of the imported solid extract used, and the gross, tare, and net weight of the liquid extract produced therefrom. A sworn abstract from this record shall be filed with each drawback entry. The barrels containing the product shall be marked with the serial number, gross, tare, and net weight of the liquid extract contained therein.

The quantity of imported material shall not exceed that shown in the abstract from the manufacturing records, and the records shall be verified at least twice a year.

The manufacturers' sworn statement dated September 13, 1910, is now on file at the port of Philadelphia, and their statement dated July 8, 1911, is inclosed herewith for filing in your office.

T. D. 30951 of September 27, 1910, is hereby revoked.

Respectfully, R. O. BAILEY,
(79689.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 31781.)

Cigars and cigarettes from Philippine Islands.

Section 2804, Revised Statutes, applied to cigars and cigarettes from the Philippine Islands—Instructions to customs officers—Opinion of the Attorney General.

TREASURY DEPARTMENT, *July 31, 1911.*

To collectors and other officers of the customs:

Your attention is invited to the appended communication from the Attorney General, dated the 10th of May, 1911, in which he expresses the opinion that section 2804 of the Revised Statutes, as quoted therein, applies to cigars and cigarettes coming from the Philippine Islands, and that section 3402, *ibid.*, does not apply thereto.

The customs-inspection stamps required under said section of law may be affixed to packages of cigars and cigarettes in the islands by the officer who affixes the United States internal-revenue stamps. The affixing of such stamps will be shown by a certificate of that officer to be pasted on the outer covering as in the case of internal-revenue stamps. (T. D. 29944, regulation 8.)

When it is certified on the outer case that customs-inspection stamps have been affixed in accordance with the provisions of said section 2804, Revised Statutes, as amended, customs officers in the United States need not examine the interior packages for the purpose of determining whether they are packed according to that section of law.

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In the absence of such certificate customs officers will inspect the interior packages and affix stamps in accordance with articles 302, 1235, and 1477 of the Customs Regulations of 1908. In every case, however, a separate serial number must be applied to each importation of cigars and cigarettes made by individual importers or firms, as required in article 302 of the said regulations.

The interpretation given herein to said section 2804, Revised Statutes, will not affect the present regulation in department circular, "Notice to passengers," dated March 14, 1911, that "each passenger over 18 years of age may bring in free of duty 50 cigars or 300 cigarettes if for the bona fide use of such passenger." In all other cases, whether the cigars or cigarettes come from the islands as baggage or by mail, express, or freight, the provisions of said section will be applied thereto, and fines equal to duty collected for violations of that section, as if the articles came from a foreign country. T. D. 29956 of August 19, 1909, is hereby amended accordingly.

JAMES F. CURTIS, *Assistant Secretary.*

DEPARTMENT OF JUSTICE,
Washington, May 10, 1911.

SIR: By your letter of March 22, 1911, you transmitted certain correspondence between the Secretary of War and the Governor General and other officers of the Philippine Islands, in which they request that cigars and cigarettes, the product of those islands, be admitted into the United States in quantities less than 3,000 in a single package. You also state that you have received requests from customs officers for instructions as to the necessity for affixing customs stamps on Philippine cigars.

After quoting sections 2804 and 3402 of the Revised Statutes, you say:

The admission of Philippine cigars and cigarettes in lots of less than 3,000 in a single package would present no administrative difficulties, and as this department is desirous of facilitating trade with the Philippine Islands so far as may be compatible with the law, I shall be pleased to have an expression of your opinion as to whether or not the provisions of said sections 2804 and 3402 of the Revised Statutes, as quoted above, especially the word "imported," should be applied to cigars and cigarettes brought to the United States from the said islands.

The admission into the United States of goods coming from the Philippine Islands is regulated primarily by section 5 of the tariff act of August 5, 1909 (36 Stat., 11, 83), which provides:

SEC. 5. That there shall be levied, collected, and paid upon all articles coming into the United States from the Philippine Islands the rates of duty which are required to be levied, collected, and paid upon like articles imported from foreign countries: *Provided*, That, except as otherwise hereinafter provided, all articles, the growth or product of or manufactured in the Philippine Islands from materials the growth or product of the Philippine Islands or of the United States, or of both, or which do not contain foreign materials to the value of more than twenty per centum of their total value, upon which no drawback of customs duties has been allowed therein, coming into the United States from the Philippine Islands shall hereafter be admitted free of duty, except rice, and except, in any fiscal year, * * * cigars in excess of one hundred and fifty million cigars, which quantities shall be ascertained by the Secretary of the Treasury under such rules and regulations as he shall prescribe: * * * *And provided further*, That there shall be levied, collected, and paid, in the United States, upon articles, goods, wares, or merchandise coming into the United States from the Philippine Islands, a tax equal to the internal-revenue tax imposed in the United States upon the like articles, goods, wares, or merchandise of domestic manufacture; such tax to be paid by internal-revenue stamp or stamps,

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to be provided by the Commissioner of Internal Revenue, and to be affixed in such manner and under such regulations as he, with the approval of the Secretary of the Treasury, shall prescribe. * * *

Section 2804 of the Revised Statutes as amended provides:

SEC. 2804. No cigars shall be imported unless the same are packed in boxes of not more than five hundred cigars in each box; and no entry of any imported cigars shall be allowed of less quantity than three thousand in a single package; and all cigars on importation shall be placed in public store or bonded warehouse, and shall not be removed therefrom until the same shall have been inspected and a stamp affixed to each box indicating such inspection, and also a serial number to be recorded in the customhouse, and the Secretary of the Treasury is hereby authorized to provide the requisite stamps and to make all necessary regulations for carrying the above provisions of law into effect.

The act of July 1, 1902 (32 Stat., 691, 711), known as the Philippine organic act, provided:

SEC. 84. That the laws relating to entry, clearance, and manifests of steamships and other vessels arriving from or going to foreign ports shall apply to voyages each way between the Philippine Islands and the United States and the possessions thereof, *and all laws relating to the collection and protection of customs duties not inconsistent with the act of Congress of March eighth, nineteen hundred and two, "temporarily to provide revenue for the Philippine Islands," shall apply in the case of vessels and goods arriving from said islands in the United States and its aforesaid possessions.*

This provision is general and continuing in its nature, and has not, so far as I am advised, been repealed by subsequent legislation. Assuming it, therefore, to be in force, it sufficiently answers your inquiry as to the applicability of section 2804 to cigars coming from the Philippine Islands, and renders unnecessary any consideration of the meaning of the word "imported" in that section. For the same reason, nothing in the opinion of Acting Attorney General Fowler of September 19, 1910 (28 Op., 422), holding that section 14 of the tariff act of August 5, 1909, which prohibits the importation from foreign countries of convict-made goods, did not apply to goods manufactured in the Philippine Islands, is applicable to this case.

Section 2804 of the Revised Statutes plainly relates to the "collection and protection of customs duties" upon cigars, within the meaning of section 84 of the Philippine organic act, and is not inconsistent with the act of March 8, 1902, "temporarily to provide revenue for the Philippine Islands," nor with anything in the tariff act of August 5, 1909. It apparently does not make any difference, so far as the applicability of section 2804 is concerned, that cigars coming into the United States from the Philippine Islands are not dutiable. But such cigars are dutiable unless they are shown to comply with the conditions specified in the act of August 5, 1909, as necessary to entitle them to free entry. All such cigars should, therefore, be entered in accordance with the provisions of the laws relating to the "collection and protection of customs duties," and particularly section 2804, Revised Statutes, and such, I think, was the intention of Congress.

It is noted that your inquiry pertains both to cigars and cigarettes, while the provisions of law referred to relate in express terms to cigars only. In your letter of the 3d instant you inform me, in response to my inquiry, that the practical construction which your department has placed upon the term "cigars," as used in section 2804 of the Revised Statutes and section 5 of the tariff act of 1909, is that it includes cigarettes, and I adopt that construction herein, as I do not understand that it was your intention to submit that question for my opinion.

Section 3402 of the Revised Statutes, also mentioned in your inquiry, provides:

SEC. 3402. All cigars imported from foreign countries shall pay, in addition to the import duties imposed thereon, the tax prescribed by law for cigars manufactured in the United States, and shall have the same stamps affixed. The stamps shall be affixed and canceled by the owner or importer of the cigars while they are in the custody of the proper custom-house officers, and the cigars shall not pass out of the custody of such officers until the stamps have been so affixed and canceled, but shall be put up in boxes containing quantities as prescribed in this chapter for cigars manufactured in the United States, before the stamps are affixed. And the owner or importer of such cigars shall be liable to all the penal provisions of this title prescribed for manufacturers of cigars manufactured in the United States. * * *

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Section 3402 is a part of the general laws relating to the collection of *internal* revenue. It relates in terms to cigars imported from foreign countries, and, unlike the laws relating to the collection and protection of the *customs* revenue, has apparently not been expressly applied to cigars coming from the Philippine Islands. But it is unnecessary to consider whether this section was intended to apply to cigars coming from the Philippine Islands, because section 5 of the act of August 5, 1909, expressly provides for the internal-revenue tax on cigars brought from the Philippine Islands, and specifies that the stamps in payment thereof are "to be provided by the Commissioner of Internal Revenue, and to be affixed in such manner and under such regulations as he, with the approval of the Secretary of the Treasury, shall prescribe." This specific provision on the subject must be taken as exclusive.

Having held that section 2804, which forbids the entry of cigars of less quantity than 3,000 in a single package, applies to cigars coming from the Philippine Islands, it becomes unnecessary to answer your further question, whether shipments of cigars in quantities of less than 3,000 in a single package through the mails via Hongkong would be a direct or indirect shipment under section 5 of the tariff act of August 5, 1909.

What has been said as to the applicability of section 2804 also disposes of your inquiry in regard to cigars and cigarettes brought into the United States from the Philippine Islands in excess of the limitation fixed by the act of August 5, 1909.

Respectfully, GEO. W. WICKERSHAM,
Attorney General.

The SECRETARY OF THE TREASURY.

(T. D. 31782.)

Subports of entry.

Boca Grande, Fla., designated as a subport of entry in the customs collection district of Key West.

TREASURY DEPARTMENT, *July 31, 1911.*

SIR: Under the authority contained in the act approved June 10, 1896, Boca Grande, Fla., is hereby designated as a subport of entry in the customs collection district of Key West.

In another communication you will be instructed concerning the assignment of an officer to the place named.

Respectfully, JAMES F. CURTIS,
(86879.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Key West, Fla.*

(T. D. 31783.)

Wood pulp—Printing paper.

Instructions as to the assessment of duty on wood pulp and printing paper, under paragraphs 406 and 409, tariff act of 1909, produced from wood cut on Crown lands in Newfoundland.

TREASURY DEPARTMENT, *July 29, 1911.*

To collectors of customs and others concerned:

The department is in receipt from the Secretary of State of a copy of the Newfoundland "Crown lands act," of May 20, 1903, sections 33 and 37 of which are as follows:

33. The governor in council may grant licenses to cut timber on Crown lands for the manufacture of paper and paper pulp.

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37. No holder of a timber or pulp license shall take or carry away for exportation from the lands licensed any trees, logs, or timber, unless and until the same have been manufactured either into paper or paper pulp, sawn lumber, or other salable products of timber, under a penalty of not less than $20 for every tree cut, to be recovered by suit in the name of the minister of agriculture and mines; and trees or timber cut into cordwood or other lengths shall be held not to be salable products of timber for the purposes of this section; provided that this section shall not apply to any pulp wood or timber already cut under the authority of the governor in council.

The foregoing provisions of law in effect forbid the exportation for use in the manufacture of wood pulp of the wood specified. You will, therefore, assess on wood-pulp and printing-paper products from such wood duties as follows:

On mechanically ground wood pulp, duty, under paragraph 406 of the tariff act of August 5, 1909, at the rate of one-twelfth of 1 cent per pound, dry weight.

On chemical wood pulp, the regular duties, under paragraph 406 of said act, at the following rates:

Unbleached, one-sixth of 1 cent per pound, dry weight; bleached, one-fourth of 1 cent per pound, dry weight.

On printing paper, the regular rates of duty, and in addition thereto the additional duty of one-tenth of 1 cent per pound when valued at 3 cents per pound or less, under paragraph 409 of said tariff act.

Unless it shall affirmatively appear that the imported products were produced from wood not cut from Crown lands, you will consider the importation as a product of wood cut from such lands, and collect duties accordingly.

The Secretary of State has this day been requested to instruct the American consular officers concerned to certify on invoices the origin of the wood from which the products exported were manufactured.

This decision will take effect 30 days after date, as provided in T. D. 28627 of December 18, 1907.

FRANKLIN MACVEAGH, *Secretary.*

(T. D. 31784.)

American animals.

Paragraph 500 of the tariff act of 1909, amended by act approved July 27, 1911, so as to permit the free entry, under certain conditions, of animals of American origin.

TREASURY DEPARTMENT, *July 31, 1911.*

To collectors and other officers of the customs:

Your attention is invited to the following copy of an act approved July 27, 1911, entitled:

An act to amend paragraph five hundred of the act approved August fifth, nineteen hundred and nine, entitled "An act to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes."

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Confirming the telegram addressed to certain collectors of customs on the 28th *idem*, as follows:

Paragraph 500 amended to apply to animals under certain conditions. Took effect 27th instant. Suspend liquidation entries pending publication instructions—

I have to advise you that the amendment consists in striking out in said paragraph 500 the words "not including animals," and in adding the following proviso:

And provided further, That cattle, horses, sheep, and other domestic animals straying across the boundary line into any foreign country or driven across such boundary line by the owners for temporary pasturage purposes only, together with their offspring, shall be dutiable, unless brought back to the United States within six months, under regulations to be prescribed by the Secretary of the Treasury, in accordance with the provisions of paragraph four hundred and ninety-two.

Under this amendment, the practice will be the same as under T. D. 31393 of March 9, 1911.

FRANKLIN MACVEAGH, *Secretary*.

[PUBLIC No. 4.—H. R. 12312.]

AN ACT To amend paragraph five hundred of the act approved August fifth, nineteen hundred and nine, entitled "An act to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes."

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That paragraph five hundred of the act approved August fifth, nineteen and nine, entitled "An act to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes," shall be so amended as to read as follows:

"500. Articles the growth, produce, or manufacture of the United States, when returned after having been exported, without having been advanced in value or improved in condition by any process of manufacture or other means; casks, barrels, carboys, bags, and other containers or coverings of American manufacture exported filled with American products, or exported empty and returned filled with foreign products, including shooks and staves when returned as barrels or boxes; also quicksilver flasks or bottles, iron or steel drums used for the shipment of acids, of either domestic or foreign manufacture, which shall have been actually exported from the United States; but proof of the identity of such articles shall be made, under general regulations to be prescribed by the Secretary of the Treasury, but the exemption of bags from duty shall apply only to such domestic bags as may be imported by the exporter thereof, and if any such articles are subject to internal-revenue tax at the time of exportation, such tax shall be proved to have been paid before exportation and not refunded; photographic dry plates or films of American manufacture (except moving picture films), exposed abroad, whether developed or not, and films from moving picture machines, light struck or otherwise damaged, or worn out, so as to be unsuitable for any other purpose than the recovery of the constituent materials, provided the basic films are of American manufacture, but proof of the identity of such articles shall be made under general regulations to be prescribed by the Secretary of the Treasury: *Provided*, That this paragraph shall not apply to any article upon which an allowance of drawback has been made, the reimportation of which is hereby prohibited except upon payment of duties equal to the drawbacks allowed;

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or to any article manufactured in bonded warehouse and exported under any provision of law: *And provided further*, That when manufactured tobacco which has been exported without payment of internal-revenue tax shall be reimported it shall be retained in the custody of the collector of customs until internal-revenue stamps in payment of the legal duties shall be placed thereon: *And provided further*, That cattle, horses, sheep, and other domestic animals straying across the boundary line into any foreign country or driven across such boundary line by the owners for temporary pasturage purposes only, together with their offspring, shall be dutiable, unless brought back to the United States within six months, under regulations to be prescribed by the Secretary of the Treasury, in accordance with the provisions of paragraph four hundred and ninety-two."

Approved July 27, 1911.

(T. D. 31785—G. A. 7250.)

Strings for musical instruments.

Catgut strings of lengths and quality permitting their use in the condition in which imported as strings for musical instruments are dutiable as such at the rate of 45 per cent ad valorem under paragraph 467, tariff act of 1909, and are not entitled to entry free of duty under paragraph 529 as catgut unmanufactured.—Davies, Turner & Co. *v.* United States (115 Fed. Rep., 232) distinguished.

United States General Appraisers, New York, July 28, 1911.

In the matter of protest 463411 of C. B. Richard & Co. against the assessment of duty by the collector of customs at the port of New York.

Before Board 1 (SHARRETTS, MCCLELLAND, and CHAMBERLAIN, General Appraisers; signed by SHARRETTS and SOMERVILLE, G. A.).

SHARRETTS, *General Appraiser:* The merchandise in issue is gut strings, upon which duty was assessed at the rate of 45 per cent ad valorem under paragraph 467 of the tariff act of 1909 as strings for musical instruments, the importers claiming the strings in question to be entitled to free entry under paragraph 529 as catgut unmanufactured; or, alternatively, dutiable at only 25 per cent ad valorem under paragraph 462 as manufactures of catgut not specially provided for, the invoice numbers of the items involved being 47/1-2-3, 57/1-2-3, 49/1-2-3, in violet and white, and 51/1-2-3, 53/1-2-3, 34/1-2, and 334/1-2.

The testimony shows that by commercial usage strings designed for use on musical instruments are cut in certain lengths, known in trade as single, double, treble and four-length strings, and from the exhibits in the case we find all the strings covered by the protest to be of such lengths. Furthermore, the concurrent testimony of all of the witnesses is that these strings in the condition in which they are imported are suitable for use on string instruments.

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Several of the witnesses testified that there is no difference between surgical gut and strings for musical instruments, and that both are interchangeable for either use. With this proposition we are unable to concur. There are many degrees of quality from the lowest to the highest, between gut strings in the condition in which they leave the twisting frame and those selected by musicians for use on violins, cellos, or other string instruments, which variations in quality are dependent upon the extent of manual labor applied to the articles, resulting in more or less perfection of finish and equality of gauge; and while it is true that every gut string designed and intended for use as a musical instrument string possesses in the maximum degree all of the qualities requisite in a surgical ligature, yet, on the contrary, gut strings admirably adapted for use as ligatures would fall far short of possessing the strength and uniformity of texture and gauge essential in strings for musical instruments and insisted upon by the trade when purchasing the latter.

Counsel for the importers lays great stress upon the decision of the court in the case of Davies, Turner & Co. *v.* United States (115 Fed. Rep., 232) as controlling in the case at bar. In the case cited the merchandise passed upon by the court was catgut strings in lengths much longer than those of the strings now under consideration, clearly unfit, in the condition as imported, for use as strings for musical instruments, and the evidence there taken showed that it had no commercial use other than as material to be made into surgical ligatures. These facts distinguish the case cited from the case before us. The evidence furnished by the importers in support of their contentions is inadequate to overcome the presumption of correctness that attaches to the collector's decision, while, on the other hand, the exhibits show the merchandise to be identical in all particulars with those musical instrument strings that are known commercially as violin A and E strings and banjo firsts. That fact, in conjunction with the statements of the witnesses that catgut strings imported in single, double, treble, and four lengths would be designed for use as musical instrument strings, and the testimony submitted in behalf of the Government fully sustains the correctness of the classifying officer's action.

In harmony with the views herein expressed, based on the record and the exhibits, we find the merchandise to be strings for musical instruments, and hold that they were correctly assessed with duty by the collector, whose decision is affirmed.

The protest is overruled.

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(T. D. 31786—G. A. 7251.)

Toy necklaces, bracelets, and brooches.

Necklaces and chains fitted with cheap brass snaps or clasps valued at not more than 11 marks per gross, and bracelets and armlets valued at not more than 7 marks per gross, all the foregoing composed in chief value of beads, and brooches or pins composed of base metal and paste, valued at not more than 7 marks per gross; cheap and flimsy in construction and character, designed and intended for the use and amusement of children in play, not suitable for wear by others than children, and commercially known and dealt in as toys, are dutiable at the rate of 35 per cent ad valorem under paragraph 431 of the tariff act of 1909 as toys, and not at 60 per cent ad valorem under paragraph 421 as beaded articles or at 45 per cent ad valorem under paragraph 199 or 109 as manufactures in chief value of metal or glass.—G. A. 6868 (T. D. 29558) and G. A. 6658 (T. D. 28391) and suit 3106 (T. D. 26903) cited.

United States General Appraisers, New York, July 28, 1911.

In the matter of protest 447903, etc., of H. Buss & Co. et al. against the assessment of duty by the collector of customs at the port of New York.

Before Board 1 (SHARRETTS, MCCLELLAND, and CHAMBERLAIN, General Appraisers; signed by SHARRETTS and SOMERVILLE, G. A.).

SHARRETTS, *General Appraiser:* The merchandise in question consists of—

1. Necklaces and chains composed of beads, fastened with a cheap brass clasp, valued at not more than 11 marks per gross.

2. Bracelets and armlets composed of beads, valued at not more than 7 marks per gross.

3. Brooches or pins composed of base metal and paste, valued at not more than 7 marks per gross.

Duty was assessed on the necklaces and bracelets at the rate of 60 per cent ad valorem under paragraph 421 of the tariff act of 1909 as beaded articles, and on the brooches at the rate of 45 per cent ad valorem under paragraphs 199 and 109 of said act as manufactures of metal and paste. All three classes are claimed to be dutiable at the rate of 35 per cent ad valorem under paragraph 431 of the said act as toys.

The uncontradicted evidence shows that the necklaces, bracelets, and brooches in question are of cheap construction and flimsy in character; that they are designed and intended for the use and amusement of children; that they are not suitable for, nor are they worn by, adults; and that they are commercially known, bought, and sold as toys and are included within the term "toys" as that term was understood in the wholesale trade and commerce of the United States at and prior to August 5, 1909. It further appears conclusively from the evidence that similar necklaces and bracelets and brooches, when valued at more than 11 marks and 7 marks per gross, respectively, are not commercially included within the term "toys."

Upon the record and exhibits and upon the authority of G. A. 6868 (T. D. 29558), G. A. 6658 (T. D. 28391), and suit 3106 (T. D. 26903)

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we sustain the protests as to the necklaces and chains valued at not more than 11 marks per gross, and bracelets, armlets, and brooches valued at not more than 7 marks per gross, wherever such items appear on the invoices, and overrule the protests on all items of necklaces and bracelets and brooches which are valued at more than 11 marks and 7 marks per gross, respectively.

The decisions of the collector are modified accordingly.

(T. D. 31787—G. A. 7252.)

Common window glass, bent—Parts of goggles.

Pieces of common window glass, bent, suitable for use in the manufacture of automobile goggles, are not dutiable as lenses of glass or pebble, or as plano or coquill glasses, ground and polished, under paragraph 109 of the tariff act of 1897. They are dutiable at 1¾ cents per pound and 5 per cent ad valorem under paragraphs 101 and 107 of said act.—G. A. 6961 (T. D. 30266), affirmed by the United States Court of Customs Appeals in the case of United States *v.* American Thermo Ware Company (T. D. 31571), cited.

United States General Appraisers, New York, July 28, 1911.

In the matter of protests 328161, etc., of American Thermo Ware Co. against the assessment of duty by the collector of customs at the port of New York.

Before Board 1 (SHARRETTS, MCCLELLAND, and CHAMBERLAIN, General Appraisers; signed by SHARRETTS and SOMERVILLE, G. A.).

SHARRETTS, *General Appraiser:* The merchandise in question consists of pieces of common window glass, bent, suitable for use in the construction of automobile goggles. It was assessed with duty at the rate of 45 per cent ad valorem and 10 cents per dozen pairs under paragraph 109 of the tariff act of 1897. It is claimed to be dutiable at 1¾ cents per pound and 5 per cent ad valorem under paragraphs 101 and 107 of said act.

In G. A. 6961 (T. D. 30266) this board passed upon the precise question involved in these cases and sustained the claim made herein. On appeal by the Government this decision was affirmed by the United States Court of Customs Appeals. (T. D. 31571.) Upon the authority of said decision we sustain the protests and reverse the decision of the collector in each case.

(T. D. 31788.)

Abstracts of decisions of the Board of General Appraisers.

Board 1.—Sharretts, McClelland, and Chamberlain. *Board 2.*—Fischer, Howell, and Cooper. *Board 3.*—Waite, Somerville, and Hay.

BEFORE BOARD 1, JULY 25, 1911.

No. 26190.—PROTESTS OVERRULED.—Protests 216685, etc., of John Davison, and protests 214432, etc., of S. Herbert (New York). Opinions by Sharretts, G. A. Protests overruled for want of merit.

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BEFORE BOARD 2, JULY 25, 1911.

No. 26191.—ROUGH-TRIMMED MICA.—Protests 483723, etc., of Bullock Electric Manufacturing Co. (Cincinnati), and protest 499105 of F. W. Myers & Co. (Plattsburg). Opinions by Fischer, G. A.

Protests sustained as to rough-trimmed mica on the authority of United States *v.* Myers (T. D. 31301).

No. 26192.—COLLAPSIBLE PAPER CARTONS—SURFACE-COATED PAPER.—Protests 498318 of T. H. Moore (New York). Opinion by Fischer, G. A.

Collapsible cartons made of paper and classified as a manufacture of surface-coated paper under paragraph 411, tariff act of 1909, were held dutiable as a manufacture of paper (par. 420), as claimed by the importer.

No. 26193.—CUT-BOWL PAPERS.—Protests 501915, etc., of C. A. Johnson & Co. (New York). Opinion by Fischer, G. A.

Protests sustained as to cut-bowl papers. Abstract 25522 (T. D. 31568) followed.

No. 26194.—PROTESTS OVERRULED.—Protests 402094, etc., of B. D. Webber et al. (Boston), protests 504057, etc., of Lanyon-Starr Co. et al. (Kansas City), protest 445802 of China & Japan Trading Co., protests 496968, etc., of Mulhens & Kropff et al., protest 416120 of J. A. Roebling's Sons Co., and protests 188525, etc., of Washburn Wire Co. et al. (New York), and protest 503254 of C. H. Wyman & Co. (St. Louis). Opinions by Fischer, G. A.

Protests overruled for want of merit.

No. 26195.—UNTRIMMED HATS.—Protest 395065 of Simpson, Crawford Co. (New York). Opinion by Howell, G. A.

Merchandise classified as wearing apparel composed of vegetable fiber under paragraph 314, tariff act of 1897, was held dutiable as untrimmed hats composed of grass braids (par. 409). Protest sustained.

No. 26196.—PROTESTS OVERRULED.—Protests 498081, etc., of H. B. Claflin Co. et al., protests 448835, etc., of Lunham & Moore et al., protests 202305, etc., of A. S. Rosenthal Co. et al., protests 432614, etc., of William H. Stiner & Son et al., and protests 497029, etc., of K. Takayama (New York). Opinions by Howell, G. A.

Protests overruled for want of merit.

BEFORE BOARD 3, JULY 25, 1911.

No. 26197.—TAMARINDS—Protests 447955, etc., of John Duncan's Sons et al. (New York).

WAITE, *General Appraiser:* The commodity in question is the same as that passed upon by the board in the Roche case, Abstract 24581 (T. D. 31207). The invoice description is "80 barrels tamarinds." It appears to be the fruit known as the tamarind, over which a small amount of molasses or sirup has been poured, which acts as a preservative, protecting the fruit from the ravages of insects and from decay. We think the testimony shows that the most of this commodity goes to the drug trade. Duty was assessed under the provision in paragraph 274, tariff act of 1909, for "fruits of all kinds * * * preserved or packed in molasses," and the goods are claimed to be free of duty under paragraph 688, which consists of the single word "tamarinds."

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The evidence discloses the fact that the great bulk of the tamarinds imported are in this condition, although the testimony herein differs from the testimony taken in the previous case (protest 419125, reported as Abstract 24581, *supra*), in that it shows some small shipments of tamarinds without the addition of the molasses. We do not think, however, that this is sufficient to warrant us in changing the classification. The percentage of tamarinds imported in that condition is small. The tamarind in the condition here imported has been recognized in the various statutes for a number of years as the tamarind of commerce and admitted free under similar provisions in the various statutes. The testimony and record in the previous case, above mentioned, have been introduced here. From the whole record we see no reason for changing our previous ruling. We therefore sustain the protests.

No. 26198.—Weight of Nuts.—Protest 472459 of A. G. Heghinian (New York). Opinion by Waite, G. A.

The importer claimed duty was assessed upon an excessive weight of pistachio nuts. Protest sustained.

No. 26199.—Lily Flowers—Lily Roots.—Protest 460276 of Wing Sang Lung Kee (Portland, Oreg.).

Protest sustained as to lily flowers on the authority of Abstract 24009 (T. D. 30944), and overruled as to lily roots.

Waite, *General Appraiser:* * * * The lily roots are sliced and dried, and from the sample on file are similar to the goods passed upon in Abstract 21688 (T. D. 29946). In that case, which arose under the act of 1897, they were held to be properly dutiable under paragraph 257, as vegetables in their natural state. The cases at bar, however, arise under the act of 1909, and by virtue of the provision in paragraph 252 of said act for "vegetables, if cut, sliced, or otherwise reduced in size," we are of the opinion that this lily root, being sliced, is now more specifically provided for therein than as a vegetable in its natural state under paragraph 269, as claimed.

No. 26200.—Protests Overruled.—Protest 480497 of Alfred D. Foster (Boston), protests 467822, etc., of E. Bradley Currier, protest 447954 of John Duncan's Sons, protest 487782 of F. A. Garramone, protest 489290 of T. K. Malouf & Co., and protests 452278, etc., of Maltus & Ware (New York), protest 471151 of E. Linnenkamp (St. Joseph), and protest 449065 of Shing Shun & Co. (San Francisco). Opinions by Waite, G. A.

Protests overruled for want of merit.

No. 26201.—Rotten Fruit.—Protests 300226, etc., of G. D'Alessandro, and protests 462962, etc., of Rojas Hutcheson Co. (New York). Opinions by Somerville, G. A.

The board sustained claims for allowances on account of decay in fruit imported under the act of 1897.

No. 26202.—Shelled Almonds.—Protests 421164, etc., of Chun Wo Tong & Co. et al. (San Francisco). Opinion by Somerville, G. A.

Protests overruled as to shelled almonds. G. A. 7199 (T. D. 31475) followed.

No. 26203.—Decayed Macaroni.—Protests 451754, etc., of P. Pastene & Co. (Boston). Opinion by Somerville, G. A.

A claim for allowance of duty was sustained owing to a portion of the macaroni imported being decayed.

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No. 26204.—Shortage.—Protest 491103 of Johnson, Boyd & Co. (Baltimore), and protest 487931 of Caller & Co. (New York). Opinions by Somerville, G. A.

The board sustained claims for a refund of duty on account of shortage.

No. 26205.—Preserved Pineapples.—Protests 488303, etc., of P. T. Brown Co. (New York). Opinion by Somerville, G. A.

Protests sustained in part. Pineapples which were classified as "fruits of all kinds preserved or packed in sugar, or having sugar added thereto," under paragraph 274, tariff act of 1909, were held dutiable under the same paragraph as "pineapples preserved in their own juice, not having sugar added thereto." Note G. A. 7061 (T. D. 30763).

No. 26206.—Shortage of Vermuth.—Protest 495219 of Continental Distributing Co. (Port Townsend). Opinion by Somerville, G. A.

The board sustained a claim for allowance of duty on account of shortage of vermuth in bottles. Note G. A. 6944 (T. D. 30160) and Abstract 24870 (T. D. 31335).

No. 26207.—Protests Overruled.—Protest 493628-35061 of American Shipping Co. (Chicago), protest 278575 of Marrone & Lafaro, and protest 495041 of O. Schaller (New York), protest 495997 of M. Seller & Co. (Port Townsend), and protests 493719, etc., and protest 497594 of Crown Distilleries Co., and protest 497614 of Alexander D. Shaw & Co. (San Francisco). Opinions by Somerville, G. A.

Protests overruled for want of merit.

No. 26208.—Coverings of Specific-Duty and Free Goods.—Protests 469419, etc., of Tillman & Bendel et al. (San Francisco). Opinion by Hay, G. A.

Paper, cardboard, and pasteboard wrappers, or containers of merchandise subject to specific duty or free of duty were held nondutiable, as claimed by the importers. United States *v.* Matagrin (T. D. 31406) followed.

No. 26209.—Protests Overruled.—Protests 489707-36489, etc., of Pitkin & Brooks et al. (Chicago), and 437747, etc., of Morris European & American Express Co. (New York). Opinions by Hay, G. A.

Protests overruled for want of merit.

Before Board 2, July 26, 1911.

No. 26210.—Appliquéed Silks.—Protest 426934 of Harry Angelo & Co. (New York). Opinion by Howell, G. A.

Protest sustained as to appliquéed silks. United States *v.* Vietor (T. D. 31355) followed.

No. 26211.—Malines Nets.—Protests 465438, etc., of William H. Stiner & Son, and protest 445974 of Theodore Tiedemann & Sons (New York). Opinions by Howell, G. A.

Protests sustained as to Malines nets. Abstract 24701 (T. D. 31255) followed.

No. 26212.—Metal-thread Laces.—Protest 504243 of Shoninger Bros. (New York). Opinion by Howell, G. A.

Metal-thread laces, netting, and embroidery classified under paragraph 350, tariff act of 1909, were held dutiable under paragraph 179 of the same act, the collector expressing willingness to reliquidate accordingly.

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No. 26213.—Appliquéed Malines.—Protest 425246 of R. F. Downing & Co. (Boston), and protests 492811, etc., of P. K. Wilson & Co. (New York). Opinions by Howell, G. A.

Silk malines, appliquéed, classified as nettings made on the Lever or Gothrough machine under paragraph 350, tariff act of 1909, were held dutiable as appliquéed articles (par. 402). Protests sustained.

No. 26214.—Metal Belts.—Protest 263838 of R. H. Macy & Co. (New York). Opinion by Howell, G. A.

Merchandise classified as cotton wearing apparel under paragraph 314, silk wearing apparel (par. 390), and manufactures of metal threads (par. 179), tariff act of 1897, was found to be completed belts in chief value of metal and held dutiable as manufactures in part of metal (par. 193). Note G. A. 7052 (T. D. 30730).

No. 26215.—Hatters' Plush.—Protest 431051 of A. H. Ogden & Co. (New York). Opinion by Howell, G. A.

Protests sustained as to hatters' plush on the authority of Abstract 25321 (T. D. 31498).

No. 26216.—Cotton Yarn.—Protest 415822 of Albert Eckstein (New York).

The appraiser reported the merchandise to consist of "imitation horsehair * * * in the form of singles," and it was accordingly assessed under paragraph 405, tariff act of 1909. The importer claimed it to be dutiable as cotton yarn (par. 313).

Howell, *General Appraiser:* * * * The testimony shows without any conflict that the merchandise consists of a cotton yarn known as number 36 singles, which has been dyed and then coated by being run through a viscose or sort of cellulose bath, and then redyed, thus producing a highly polished, coated yarn.

We think the article is properly dutiable as a dyed cotton yarn in the form of singles at the rate of one-fourth of 1 cent per number per pound under paragraph 313 of said act. The protest is sustained to this extent.

No. 26217.—Silk Mufflers.—Protest 467568 of Kaskel & Kaskel (New York). Opinion by Howell, G. A.

Mufflers classified as silk wearing apparel under paragraph 402, tariff act of 1909, were held dutiable as silk mufflers, hemstitched (par. 400). Protest sustained.

No. 26218.—Protests Overruled.—Protests 500280, etc., of Sinclair, Rooney & Co. (Buffalo); protests 500814, etc., of Reed Bros. & Co. (Cleveland); protest 419300 of B. Altman & Co., protests 500407, etc., of American Express Co., protests 370879, etc., of Maurice Cohen et al., protests 442329, etc., of F. S. Ellenberg & Co. et al., protests 496906, etc., of Francois et al., protest 411816 and protest 441371 of Knauth, Nachod & Kuhne, protests 154770, etc., of Loewenstein & Kaufmann et al., protests 497290, etc., of R. H. Macy & Co. et al., protests 497393, etc., of G. Robison & Son et al., and protests 285236, etc., of A. S. Rosenthal & Co. (New York); and protest 499385 of W. Schade & Co., protest 356811 of Scruggs, Vandervoort & Barney Dry Goods Co., and protest 499107 of C. H. Wyman & Co. (St. Louis). Opinions by Howell, G. A.

Protests overruled for want of merit.

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BEFORE BOARD 2, JULY 28, 1911.

No. 26219.—CAST-STEEL CUTTER BLANKS.—Protest 248733 of Frank A. Tasker (New York). Opinion by Fischer, G. A.

Cast-steel cutter blanks classified as manufactured steel articles under paragraph 193, tariff act of 1897, were held dutiable as steel blanks (par. 135), as claimed by the importer.

No. 26220.—DRAWPLATES—WORTLES.—Protests 390629, etc., of Frank A. Tasker (New York). Opinion by Fischer, G. A.

Protests sustained as to drawplates and wortles on the authority of Newman-Andrew Co. *v.* United States (T. D. 31570).

No. 26221.—PROTESTS OVERRULED.—Protests 497497, etc., of Consolidated Kansas City Smelting & Refining Co. (El Paso), protests 504431, etc., of Mineral Point Zinc Co. (Milwaukee), and protests 401137, etc., of Alexander Murphy & Co. et al. (Philadelphia). Opinions by Fischer, G. A.

Protests overruled for want of merit.

No. 26222.—MALINES NETS.—Protests 485415, etc., of Judkins, McCormick Co. et al., protests 475037, etc., of Knauth, Nachod & Kuhne et al., protests 423521, etc., of Mills & Duflot, protests 475394, etc., of William Openhym & Sons, protests 484865, etc., of Pritchard Verkruzen & Co. et al., and protests 479361, etc., of Voss & Stern (New York). Opinions by Howell, G. A.

Protests sustained as to Malines nets. Abstract 24701 (T. D. 31255) and Abstract 25719 (T. D. 31654) followed.

No. 26223.—ELASTIC BELTS.—Protests 279922, etc., of M. J. Corbett & Co. et. al. (New York). Opinion by Howell, G. A.

Protests sustained as to elastic belts on the authority of G. A. 7052 (T. D. 30730).

No. 26224.—HORSEHAIR BRAIDS—HORSEHAIR HATS.—Protests 202277, etc., of H. Herrmann et al. (New York). Opinion by Howell, G. A.

Braids and hats in chief value of horsehair, classified under paragraph 390, tariff act of 1897, were held dutiable as braids and hats of straw (par. 409). United States *v.* Rheims (175 Fed. Rep., 778; T. D. 30226) followed.

No. 26225.—NOTTINGHAM NETS.—Protests 413996, etc., of H. Bauman & Co. (New York). Opinion by Howell, G. A.

Merchandise classified as nettings made on the Lever or Gothrough machine under paragraph 350, tariff act of 1909, was held dutiable as nettings made on the Nottingham lace-curtain machine (par. 351), as claimed by the importers.

No. 26226.—SILK FABRICS, UNGUMMED IN PART.—Protests 456040, etc., of A. S. Rosenthal Co. (New York).

The merchandise which was reported by the appraiser to consist of undyed silk dress goods in which the filling threads are of spun silk, classified under paragraph 399, tariff act of 1909, as all silk, ungummed in part, was claimed to be dutiable under the same paragraph as woven silk fabrics in the piece, if in the gum. Protests overruled.

HOWELL, *General Appraiser:* * * * In a brief submitted by counsel for the importers, it is argued that notwithstanding the filling threads are of spun silk, which is produced from waste silk from which the gum has been removed in the process of producing the spun silk, yet as it does not appear that the gum has been removed

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from the warp threads as well, the fabric can not be said to be "ungummed, wholly or in part." The contention is made, as we understand it, that before a woven silk fabric can be properly classified as "ungummed, wholly or in part," the fabric itself must be subjected to some process to remove any gum in the silk, and that the removal of the gum from a portion of the yarns before they are woven into the fabrics is not sufficient to justify the classification of the fabrics as "ungummed, wholly or in part." We can not assent to this view. Manifestly a fabric composed of silk yarns, all of which had been degummed before weaving, would be a woven silk fabric *wholly* ungummed, and so when a portion of the threads only have had the gum removed before weaving the fabric is ungummed *in part*.

No. 26227.—PROTESTS OVERRULED.—Protests 498411, etc., of American Express Co. (Boston), protest 430569–33921 of Gage Bros. & Co. (Chicago), protests 429519, etc., of A. J. Hague & Co. et al., protests 503463, etc., of J. Loewenthal & Co. et al., protests 497275, etc., of George Leuders & Co. et al., protests 441977, etc., of New York Merchandise Co. et al., protests 495406, etc., of S. Oppenheimer & Levy et al., protests 199099, etc., of A. S. Rosenthal Co. et al., and protests 453001, etc., of A. A. Vantine & Co. (New York), and protests 472748, etc., of B. Hart & Bro. et al. (San Francisco). Opinions by Howell, G. A.

Protests overruled for want of merit.

(T. D. 31789.)

Drawback on mirrors, glass shelves, etc.

Drawback on mirrors, glass shelves, and similar articles, manufactured by Jacques Kahn, of New York City, with the use of imported plate glass.

TREASURY DEPARTMENT, *July 31, 1911.*

SIR: Drawback is hereby allowed under section 25 of the tariff act of August 5, 1909, and the regulations promulgated thereunder (T. D. 31695 of June 16, 1911), on mirrors, glass shelves, and similar articles, manufactured by Jacques Kahn, of New York City, with the use of imported plate glass, said glass being beveled, silvered, or both beveled and silvered in the United States.

An abstract shall be filed with each entry from the manufacturing records showing the date of manufacture, the size and kind of imported plate glass used, the rate of duty paid thereon, the size of the exported glass or mirrors, and a statement as to whether beveled, silvered, or both beveled and silvered, and whether framed or unframed.

The allowance may be based on the quantity of imported material actually used as shown by the abstract, but where only a portion of the imported plate is used the drawback will be estimated on the percentage of the material in the finished article as compared with the plate from which such article was cut.

The manufacturer's sworn statement dated July 7, 1911, is transmitted herewith for filing in your office.

Respectfully, JAMES F. CURTIS,
(60606.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 31790.)

Drawback on hats.

Drawback on hat bodies and hats of chip, straw, hemp, and other materials, manufactured by R. H. Comey Co., of Camden, N. J., by process of bleaching or dyeing.—T. D. 29424 of December 21, 1908, revoked.

TREASURY DEPARTMENT, *August 2, 1911.*

SIR: Drawback is hereby allowed under section 25 of the tariff act of August 5, 1909, and the regulations promulgated thereunder (T. D. 31695 of June 16, 1911), on hat bodies and hats of chip, straw, hemp, and other materials, manufactured by the R. H. Comey Co., of Camden, N. J., by the process of bleaching or dyeing.

A manufacturing record shall be kept showing the imported hats dyed or bleached, specifically identifying the same and the character of the work performed thereon in this country—that is, whether dyed or bleached. A sworn abstract from this record shall be filed with each entry.

The allowance shall be based upon the number and kind of imported hats used, as shown by the sworn abstract from the manufacturing record.

The manufacturer's sworn statement dated July 15, 1911, is transmitted herewith for filing in your office.

T. D. 29424 of December 21, 1908, is hereby revoked.

Respectfully, JAMES F. CURTIS,
(61160.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Philadelphia, Pa.*

(T. D. 31791.)

Instructions upon questions of practice and procedure presented by the conference of administrative officers held in November, 1910.

TREASURY DEPARTMENT, *August 3, 1911.*

To collectors and other officers of the customs:

The department is in receipt of the report of the subconference of collectors and other administrative officers of the customs held in connection with the appraisers' conference in November, 1910.

The following answers are made to the questions presented by said conference:

First.—What should be the minimum amount to be refunded or collected on liquidation of entries?

When the total ascertained duty does not differ from the total estimated duties deposited by at least $1, the entry should be liquidated in the amount of duty as entered, thus avoiding the bookkeeping and accounting incident to the refund or collection of small amounts.

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Such procedure has been followed for a considerable length of time at New York and various other ports, and has given general satisfaction both to importers and to the Government.

Second.—How should fractional parts of a dollar be treated in the reduction of foreign currencies to United States money of account?

Upon regular consumption, warehouse, and appraisement entries, in the conversion of foreign currencies upon invoices covering merchandise subject to an ad valorem rate of duty, the fractional parts of the United States dollar less than 50 cents should be ignored, and 50 cents or more should be considered as $1. This practice was approved by the Board of United States General Appraisers in T. D. 27716 of November 17, 1906.

When imported merchandise is entered upon a regular consumption, warehouse, or appraisement entry, and is subject to a specific rate of duty of 50 cents or less per unit, a fractional part of the unit of quantity less than one-half should be disregarded, and fractional parts of such unit of quantity of one-half or more should be treated as one; but if the specific rate of duty is more than 50 cents per unit, duty should be assessed on the exact quantity and the fractional part thereof, if any, should be expressed in the form of a decimal extended two places.

However, in the assessment of duty on articles imported in the mails, in passengers' baggage, or in packed packages covered by informal entry, the foreign currency should be converted to its exact equivalent in United States money, and ad valorem or specific rates of duty applied to the exact values or quantities, as the case may be.

A distinction is made between the two classes of entries above mentioned because of the fact that the duties accruing on mail importations, packed packages, and baggage entries are generally small, and the importers are not usually engaged in the importation of merchandise, and small discrepancies between the exact amount of duties accruing and the amount collected can not, therefore, be evened up on other importations.

Third.—What information should be given in the appraising officer's return of examination and appraisement of cotton cloth, linen cloth, silks, etc., subject to a specific or a compound rate of duty which shall not be less than a prescribed minimum ad valorem rate; as, for example, linen cloth weighing more than 4½ ounces per square yard, which is subject to a compound rate of duty under paragraph 357 of the tariff, varying with the number of threads to the square inch, provided that the rate of duty thereon shall not be less than 50 per cent ad valorem?

It appears that the practice at various ports in such regard greatly differs. At some ports the examiner determines whether the compound rate or minimum ad valorem rate is the higher, and so returns

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on the invoice. As it often requires a considerable amount of calculation to determine which of such rates is the higher, and all such calculations should in any event be again made by the liquidating clerks, this results in a considerable duplication of work.

It is the practice at other ports, including the port of New York, to return the correct advisory rate, whenever the same can be determined by a casual inspection of the invoice, but when the correct rate can not be so determined, the appraiser returns the minimum rate, leaving it to the liquidating clerk to determine whether the higher rate is applicable. It is the duty of collectors to determine the rate and amount of duties chargeable. The rate returned by the appraiser is advisory only, and is usually stated in the appraising officer's return as indicating the character of the merchandise imported. In any case, where the appraiser's return is made under a paragraph providing a minimum and a maximum rate, as one or the other may be the higher, liquidating clerks should make the calculations and determine the rate of duty applicable, notwithstanding the advisory rate returned by the appraising officer. In order to avoid, however, the occurrence of errors by reason of liquidators relying upon the appraiser's return, the department is of the opinion that the appraising officer should indicate both the compound rate and the minimum rate; to illustrate: "Linen fabrics over 4½ ounces, more than 120 threads, 6 cents and 30 per cent, or 50 per cent."

Fourth.—Mail importations.

Nearly all the questions raised at said conference relating to importations through the mails are fully covered by the Customs Regulations. The provisions of such regulations, however, appear to be misunderstood at some of the ports. There is no provision in the customs laws or regulations for the delivery, free of duty, of mail importations because of the small value thereof or of the amount of duties accruing thereon, except that articles 816 and 817 of the regulations of 1908 authorize the delivery, free of duty, of letters and parcels containing articles not purchased abroad by order of the addressee and clearly intended as gifts or presents from the senders, when valued at less than $1, and also of letters and parcels containing samples of no commercial value or valued at less than $1, and so returned by the appraiser. In other cases, where the duty is less than 25 cents, mail packages may be delivered free of duty, unless the collector shall be of opinion that the sending of the packages in this way is a subterfuge to avoid the payment of duty.

Article 818 of the Customs Regulations of 1908 provides that mail entries when once issued shall not be canceled except by authority of the Secretary of the Treasury.

Therefore when by reason of the refusal of the addressee to accept a package the duty or fine accruing thereon can not be collected, the

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collector at the port at which the entry was issued should forward the same to the department, with a brief letter detailing the number of the entry, the name and residence of the addressee, the amount of duty, and the reason for canceling, and request authority to cancel such entries. Upon such authority being granted, and the mail entries being returned to the collector by the department, a copy of the letter of authority should be forwarded with such entries to the Auditor for the Treasury Department.

It is the practice at several ports to apply to the department once each month for authority to cancel such entries, thus avoiding the writing of numerous letters. Such a practice is satisfactory to the department and may be adopted at all ports. The practice at some ports of forwarding canceled mail entries directly to the auditor without receiving authority from the department for their cancellation should be discontinued.

The matter of the adoption of a form of label for sealed letters and packages, stamped "Supposed to be dutiable," and delivered to the postmaster to be opened by the addressee in the presence of the customs officer at the exchange office at which received, will be given consideration by the department when a revision of the joint regulations is made. In the meantime it is suggested that when such action is considered advisable or necessary by the collector a memorandum of such letters and packages be kept and the delivery of such letters or packages be checked off thereon as made.

Fifth.—Baggage entries and declarations and the collection of duties on articles imported in passengers' baggage.

The form of declaration and entry required to be taken from returning residents of the United States at border ports is prescribed in T. D. 30497 of April 4, 1910. Regulations governing declarations to be made at seacoast ports are contained in department's circular dated March 14, 1911 (T. D. 31382). The regulations governing the collection of duties upon articles contained in passengers' baggage, and the exemption to be allowed returning residents of the United States, are also contained in said circular, and in department's letter of March 20, 1911, and should be followed at all ports.

When articles contained in passengers' baggage are found upon examination to be subject to an ad valorem rate of duty, duty should be assessed thereon upon the market value thereof as returned by the appraising officer, and not upon the value declared, if there be any discrepancy in the appraised and declared values thereof, in accordance with the provisions of subsections 10 and 18 of section 28 of the existing tariff act.

The value of articles purchased abroad and contained in the baggage of residents of the United States returning at ports on the Canadian or Mexican borders, which may be examined and passed

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without requiring a declaration, is hereby increased from $10, as provided by T. D. 30497, to $25, as recommended by the said conference. Said Treasury decision is hereby amended accordingly.

At this time it is not considered advisable to require that a copy of a passenger's declaration be attached to the I. T. entry covering baggage forwarded under the provisions of article 624 of the Customs Regulations of 1908. In case such declaration is made at the port of first arrival the customs officers at that port should indorse upon the I. T. entry the number of passengers, whether residents or nonresidents, and the amount of exemption allowed at that port. Such information, with that contained in the affidavit or declaration made at the port of delivery, should be sufficient to enable the officers at the latter port to determine what, if any, further exemption should be allowed such passengers.

Sixth.—What should be the practice in the scaling or measurement of imported lumber to determine the dutiable quantities?

Lumber is imported under so many differing conditions that it is impossible to lay down any absolute rule of general application. To actually measure and tally each piece of lumber as unladen in many instances would involve an expense almost equal to the amount of duties collected. When lumber is imported by vessels it is the usual practice to assign a measurer, assistant weigher, or inspector, as the case may be, to each hatch of the importing vessels while discharging. Usually the lumber is discharged directly in the lumber yards of importers, and a tally is made by licensed inspectors or by tallymen, whose tally is used as a basis of settlement between the shipper and the consignee.

In such cases the officer assigned to the duty of ascertaining the imported quantity usually makes up his dock book jointly with such inspectors or tallymen, although not himself actually applying the scale. When no measure or tally of the lumber is made by either the buyer or seller at the time the cargo is discharged from the vessel, but when the lumber is piled on the dock by dimensions, the assistant weigher or inspector usually counts the tiers and courses of each pile and makes up his dock book and return accordingly. It is the usual practice at Canadian border ports to estimate the quantity of lumber imported in railway cars by ascertaining the cubic contents of such cars or by a count of tiers and courses without requiring the car to be unloaded if destined to an interior place. Estimates so made have been found upon tests made to be so nearly accurate that the expense of unloading and making an actual scale or tally would not be justified.

While an actual scale or tally can not usually be made, every reasonable precaution should be taken to verify the invoice quantities, or if the same be incorrect to ascertain the actual quantity imported,

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and if necessary the importer may be called upon to furnish a copy of the tally upon which settlement was made and all records in his possession showing the amount of lumber received and paid for by him.

Seventh.—The delivery of examined packages prior to liquidation of the entry.

Article 881 of the Customs Regulations of 1908 provides in effect that if it be found by a comparison of the appraiser's return with the entry that the estimated duties deposited are sufficient, the collector may immediately issue a permit for the delivery of the examination packages, but if the duties deposited are insufficient such packages shall be held until after the liquidation of the entry and payment of the additional and increased duties found due, unless the importer shall make a deposit of duty to cover the discrepancy.

It is not the intention of such regulation that a preliminary or tentative liquidation of the entry shall be made in order to determine whether or not increased or additional duties accrue. It is often obvious from a very casual examination of the appraiser's return that the estimated duties will be sufficient or that the same will be insufficient. If it is necessary to make calculations equivalent to the liquidation of an entry in order to determine whether the estimated duties will be sufficient, examination packages should be held until after liquidation to avoid a duplication of work. In order to avoid congestion at the appraiser's stores, and the bookkeeping incident to the deposit and the refund of small amounts, it is not the usual practice to require a deposit to be made to cover increased or additional duties when such duties are small in amount and the importer is of good business standing.

In such cases the examination packages may be delivered immediately after the receipt of the appraiser's return, upon the importer indorsing upon the invoice or entry a stipulation to pay any increased or additional duties found due upon liquidation. If the amount of such duties should be considerable, however, a deposit should be required of an amount sufficient to cover the discrepancy before delivery of the examination packages is made.

Collectors and other officers of the customs will be governed accordingly.

JAMES F. CURTIS, *Assistant Secretary.*

(T. D. 31792.)

Common carrier.

Bond approved of Seaboard Forwarding Co. for transportation of grain.

TREASURY DEPARTMENT, *August 3, 1911.*

SIR: The bond, in duplicate, transmitted with your letter of the 26th ultimo, of the Seaboard Forwarding Co., as a common carrier

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for the transportation of grain only by canal boats plying between your port and the port of New York, N. Y., is hereby approved, and one copy thereof is inclosed herewith to be placed upon the files of your office.

Respectfully, JAMES F. CURTIS,
(89844.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *Buffalo, N. Y.*

(T. D. 31793.)

Drawback on durons.

Drawback on "Durons" manufactured by the Amid-Duron Co., of Brooklyn, N. Y., with the use of an imported chemical compound known as "Amid G" and "Amid D."

TREASURY DEPARTMENT, *August 3, 1911.*

SIR: Drawback is hereby allowed under section 25 of the tariff act of August 5, 1909, and the regulations promulgated thereunder (T. D. 31695 of June 16, 1911), on preparations known as "Durons" manufactured by the Amid-Duron Co., of Brooklyn, N. Y., with the use of an imported chemical compound known as "Amid G" and "Amid D."

A manufacturing record shall be kept showing the date of manufacture and quantity of Duron No. 7 and Duron D manufactured, and the quantities of imported Amid G and Amid D used. A sworn abstract from this record shall be filed with each drawback entry.

The allowance shall not exceed the quantities actually used as shown by the sworn abstract, with a maximum allowance in the case of Duron D of 18¾ per cent of the exported quantity, and in Duron No. 7, 15 per cent of the exported quantity.

The manufacturers' sworn statement dated June 22, 1911, is transmitted herewith for filing in your office.

Respectfully, JAMES F. CURTIS,
(89545.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 31794.)

Straw hats trimmed.

Classification under paragraph 422, tariff act of 1909, of straw hats trimmed, to be limited to such as, including the trimming, are composed in chief value of straw.

TREASURY DEPARTMENT, *August 4, 1911.*

SIR: The department is in receipt of your letter of the 19th of June last, in which you state that it is the practice of your office to assess duty upon straw hats trimmed at the rate of 50 per cent ad valorem under paragraph 422 of the tariff act of August 5, 1909, notwithstanding that the trimming is the element of chief value in the completed

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hat, in harmony with the decision of the Board of United States General Appraisers of June 30, 1904, G. A. 5734 (T. D. 25440).

In the decision referred to the board held that certain hats, the bodies of which were made of straw in its natural form and structure, or of which straw was the component material of chief value, trimmed with silk and flowers, silk probably being the component material of chief value, imported under the tariff act of July 24, 1897, were properly dutiable under paragraph 409 of said act at the rate of 50 per cent ad valorem.

Paragraph 422 of the present tariff act corresponds to paragraph 409 of the act of 1897, except that it contains the provision "composed wholly or in chief value of straw." As the notes on tariff revision prepared for the use of the Committee on Ways and Means of the House of Representatives, under supervision of the clerk of that committee, invited attention to the decision of the Board of United States General Appraisers (T. D. 25440), it is fair to assume that the phrase appearing in paragraph 422 of the present act, "Composed wholly or in chief value of straw," was included in the said paragraph to meet the board's decision.

In this connection, your attention is directed to the decision of the United States Circuit Court of Appeals for the Second Circuit in the case of Rheims Co. *v.* United States (T. D. 28783, February 19, 1908), involving the classification of trimmed fur hats under the tariff act of 1897, in which the court held that certain hats the bodies of which were of fur and the trimmings of silk, silk the component material of chief value in the completed hat, were not dutiable under paragraph 432 of that act which provided for hats trimmed, composed wholly or in chief value of fur. The court held that the articles under consideration were trimmed hats not composed in chief value of fur, and that inasmuch as the paragraph covered specifically trimmed hats, completed articles, such hats not composed in chief value of fur, were manifestly outside of the paragraph.

As the same reasoning will apply to paragraph 422 of the present act, which covers trimmed or untrimmed hats composed wholly or in chief value of straw, the department is of the opinion that trimmed hats of straw, chip, grass, palm leaf, etc., are to be classified at 50 per cent ad valorem under this paragraph only when they are composed wholly or in chief value of straw, chip, etc.

You are accordingly directed to limit your classification under this paragraph of straw hats trimmed to such as, including the trimming, are composed in chief value of straw. These instructions will take effect 30 days from date.

Respectfully,
(88227)

JAMES F. CURTIS,
Assistant Secretary.

COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 31795.)

Barbados fancy molasses.

Barbados fancy and extra fancy molasses, which is cane juice concentrated by boiling to the point of preservation, but short of crystallization, dutiable under paragraph 216, tariff act of 1909, at the rate of 3 cents per gallon.

TREASURY DEPARTMENT, *August 5, 1911.*

SIR: The department is in receipt of your letter of May 10, 1911, further in regard to the request of the appraiser at your port in his letter of March 20, 1911, for authority advisorily to return for duty as sirup of cane juice, under paragraph 216 of the tariff act, certain merchandise commercially known as "fancy" and "extra fancy" molasses imported from Barbados, West Indies, which is now assessed with duty at the rate of 3 cents per gallon.

The appraiser inclosed with his letter a copy of a communication from the American consul at Barbados, dated March 7, 1911, in which he states that the grades "fancy" and "extra fancy" are cane juice concentrated by boiling to a point of preservation, but short of crystallization.

You transmit with your letter of May 10, 1911, a further report from the appraiser, in which he states that the importations of the grades of molasses under consideration have, during the present season, varied from 36° to 48°, the usual test being from 38° to 42°.

The definition of sirup of cane juice given in article 981 of the Customs Regulations of 1908 is that the commodity is the juice of the cane highly concentrated, but not to the point of crystallization, and is the result of a process of manufacture having for its chief object the concentration of the juice to the point of preservation, but short of crystallization. In view of this definition you concur in the views expressed by the department in its letter of April 26, 1911, that merchandise to fall within the article referred to must be sirup which is susceptible of crystallization. By crystallization is meant a process of crystallization that is commercially profitable.

As the American Molasses Co., in its communication of March 24, 1911, states that the molasses in question can not by any process be crystallized, and as you state that there is no apparent reason for doubting the importer's claim that the product is sold as molasses and that it would be of little value for sugar-making purposes, the department does not deem it expedient to authorize a change in the classification of this merchandise and you are accordingly directed to continue the practice which now obtains at your port in assessing duty upon the merchandise in question under paragraph 216 of the tariff act at the rate of 3 cents per gallon.

Respectfully,
(86692.)

JAMES F. CURTIS,
Assistant Secretary.

COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 31796—G. A. 7253.)

Gauge of liquors.

STANDARD TEMPERATURE OF 60° F.

Imported liquors are dutiable on the basis of their condition and measurement at the standard temperature of 60° F. prescribed by the Secretary of the Treasury, which is the rule adopted in gauging liquors under the internal-revenue laws. This rule seems reasonable and valid.

United States General Appraisers, New York, July 31, 1911.

In the matter of protests 458302, etc., of Batjer & Co. against the assessment of duty by the collector of customs at the port of New York.

Before Board 3 (WAITE, SOMERVILLE, and HAY, General Appraisers).

SOMERVILLE, *General Appraiser:* These protests are submitted for decision upon the following agreement of facts:

It is hereby stipulated and agreed that the facts in regard to the ascertainment of the quantity of spirits covered by the above protest, and the practice of the office of the surveyor of customs at New York as to ascertaining such quantity, are correctly set out in a certain letter from the surveyor of customs at New York to the Assistant Attorney General at New York, dated March 20, 1911, which reads as follows:

TREASURY DEPARTMENT,
UNITED STATES CUSTOMS SERVICE,
Port of New York, N. Y., March 20, 1911.

D. FRANK LLOYD, Esq.,
Assistant Attorney General, 641 Washington Street, City.

SIR: Replying to your request of the 14th instant that you be informed as to the practice of this department in ascertaining the capacity and contents of casks, barrels, or other containers of spirits, in so far as it relates to what is prescribed as "correction in volume for temperature," and particularly in regard to the action taken in this respect as to the following protests—

Protest.	Name.	Entry.	Steamship.	Date.
458302-30375	Batjer & Co.....	308281	Caledonian.....	Dec. 6, 1909
453304-30371	.....do.....	315166	.....do.....	Do.
456393-42595	.....do.....	5500	Kroonland	Jan. 6, 1910

I beg to state that section 3249, United States Revised Statutes, provides that—

Proof spirit shall be held to be that alcoholic liquor which contains one-half its volume of alcohol of a specific gravity of seven thousand nine hundred and thirty-nine ten thousandths (.7939) at sixty degrees Fahrenheit.

The standard temperature for the measurement of volume, having therefore been fixed at 60° F., the corrections in volume for variations in temperature above or below that point are made by adding or subtracting an amount proportionate to such increase or decrease.

The rule for such correction is laid down in United States Internal Revenue Gaugers' Manual, 1906, on pages 33, 291–305, and 409–559. The practice of this department has been to follow this rule, which was applied in the above-mentioned protests.

Your attention is called to T. D. 30970 of October 3, 1910, making this rule obligatory on customs gaugers.

Respectfully, NELSON H. HENRY, *Surveyor.*

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It is further stipulated and agreed that the quantities in gallon measurement which were added by the surveyor to the number of gallons actually found by the gaugers, by reason of the so-called correction in volume, in each of the shipments covered by the protests herein, are correctly set forth in the following letter from the surveyor of customs at New York to the Assistant Attorney General at New York, dated April 3, 1911.

TREASURY DEPARTMENT,
UNITED STATES CUSTOMS SERVICE,
Port of New York, N. Y., April 3, 1911.

D. FRANK LLOYD, Esq.,
Assistant Attorney General, 641 Washington Street, City.

SIR: Replying to your request of the 28th ultimo (folder 388) to be informed how many gallons were added to the number actually found by the gauger by reason of the so-called correction in volume, in each of the following instances—

Protest.	Name.	Entry.	Steamship.	Date.
453302-30375	Batjer & Co.....	308281	Caledonian.....	Dec. 6, 1909
453304-30871	.....do.....	315166	.....do.....	Do.
456393-42595	.....do.....	5500	Kroonland.....	Jan. 6, 1910

I beg to submit the following statement:

Entry No.	Number of packages.	Capacity.	Actual wantage shown by wantage rod.	Net gallons.	Addition for correction of volume.	Net gallons returned.
308281	2	88	− 1	87	+ 1	88
	5	111¼	− 2¼	109	.....	109
	5	111¼	− 2¼	109	.....	109
	10	437¼	− 7	430¼	+ 5	435¼
	50	1,129	−25¼	1,103¼	+ 3	1,106¼
	5	116	− 2¼	112¼	.....	112¼
	77	1,992¼	−41	1,951¼	+ 9	1,960¼
315166	25	597¼	−12¼	585	+12¼	597¼
	12	278	− 6	272	+ 2¼	274¼
	37	875¼	−18¼	857	+15	872
5500	8	200	− 5	195	+ 4	199
	15	375	− 7¼	367¼	+ 7¼	375
	23	575	−12¼	562¼	+11¼	574

Respectfully,

NELSON H. HENRY,
Surveyor.

D. FRANK LLOYD,
Assistant Attorney General.

STRAUSS & HEDGES,
Attorneys for the Importers.

APRIL 14, 1911.

It will be observed that in assessing duty the collector has added to the actual gauge of the liquors in question, which were Scotch whiskies, as follows:

9 gallons in importation covered by protest 453302.
15 gallons in importation covered by protest 453304.
11½ gallons in importation covered by protest 456393.

It is claimed by the protestants that these additions are illegal and that duty should be assessed upon the quantity of the merchandise

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found by the gauger in the condition in which it is imported. It is a matter of common knowledge that the volume of whisky or wines will expand or contract according to the temperature. That fact, moreover, is verified by the admitted state of facts. The method adopted by the gauger is shown to have prevailed at and before the time the present gauge was made. If a certain amount of this liquor had been imported in the month of August or September, when the temperature was very high, its volume would be evidently greater than if it had been imported in the month of December. It is proper therefore and reasonable, in accordance with the regulations of the Secretary of the Treasury, that the measurement should be taken at 60° F., which is the rule followed in measuring liquors of this kind under the provisions of the internal-revenue law referred to in the agreed state of facts. Otherwise precisely the same goods would be held to be dutiable at different amounts of duty according to the time of their arrival in this country.

In the case of Levi & Ottenheimer, G. A. 5214 (T. D. 24017), this principle was invoked by the importers and was held to be tenable. It was there decided that imported liquors should be assessed for duty on the basis of their condition at the standard temperature of 60° F. prescribed in the internal-revenue laws (secs. 3249–3250, Rev. Stat.), and the correction of volume is rightly made according to the extent of the difference between this standard temperature and the natural temperature of the liquors. The regulation of the Secretary of the Treasury adopting this method we hold to be reasonable and valid.

The contention that duty should be assessed on the actual quantity of liquor and spirits in the condition in which imported furnishes no ground for opposing the view we have taken. A mere diminution of the weight or measure of merchandise is not such a change of condition as to affect the classification of the whisky, as contended by the importers. Franklin Sugar Refining Co. *v.* United States (142 Fed. Rep., 376, 381), affirmed in principle by the Court of Customs Appeals in United States *v.* Franklin Sugar Refining Co. (T. D. 31659).

The above protests are overruled and the decision of the collector affirmed in each instance.

(T. D. 31797—G. A. 7254.)

Bagging for covering cotton.

Pieces of jute bagging used for covering cotton bales, composed in chief value of jute, in the approximate proportion of over 75 per cent of jute fiber, are dutiable at the rate prescribed in paragraph 355, tariff act of 1909, and not under paragraph 358 of said act.

United States General Appraisers, New York, August 4, 1911.

In the matter of protests 427349, etc., of J. H. W. Steele against the assessment of duty by the collector of customs at the port of New Orleans.

Before Board 3 (WAITE, SOMERVILLE, and HAY, General Appraisers).

SOMERVILLE, *General Appraiser:* Protest 427349 covers 110 bales and protest 442688 covers 200 bales of jute bagging, similar to the

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articles called "patches for covering cotton" and passed on by the board in the case of Wolff & Co., G. A. 7098 (T. D. 30930). The articles are made of single jute yarns and were assessed for duty under paragraph 358 of the tariff act of 1909, which reads as follows:

358. All woven articles, finished or unfinished, and all manufactures of flax, hemp, ramie, or other vegetable fiber, or of which these substances, or any of them, is the component material of chief value, not specially provided for in this section, forty-five per centum ad valorem.

The importer claims the goods are dutiable under paragraph 355 of said act as bagging for cotton of the kind there described, which said paragraph reads as follows:

355. Bagging for cotton, gunny cloth, and similar fabrics, suitable for covering cotton, composed of single yarns made of jute, jute butts, or hemp, not bleached, dyed, colored, stained, painted, or printed, not exceeding sixteen threads to the square inch, counting the warp and filling, and weighing not less than fifteen ounces per square yard, six-tenths of one cent per square yard.

The manufacturer of the goods testified as to the component materials in substances as follows: That he is the manufacturer of the goods under consideration; that there might be as much as 10 to 15 per cent of the material known as Russian seg, and that he knows the remainder of the material to be jute.

When asked what is the total of jute, he answered:

From 75 to 90 per cent, I should say.

Q. In quantity or value?—A. In both.

Q. When you say 75 to 90 per cent, does that mean quantity or value?—A. In both.

He further stated that the articles are used as patches for covering cotton.

The board, at the request of the parties, referred the matter to the local appraiser at the port of New York, with the request that he should have the samples analyzed with a view of ascertaining the component material of chief value; and if jute butts or cotton bagging, whether the cotton bagging is of jute fiber. His report stated that the samples of bagging consist of jute and other soft fibers and hard fibers, and that the fibers of jute origin largely predominate. This entirely corroborates the statement made by the manufacturer.

It appears from the testimony that the merchandise is entirely different from that passed on by the board in G. A. 7189 (T. D. 31403), commonly known as "Bootle bagging" or "Bootle compress labels," which was held by the board to be coverings for cotton, but not composed of jute, or jute butts or hemp, but that the fibers entering into their composition consisted in chief value of aloe, New Zealand tow, Russian seg, and therefore fell within the description of "other vegetable fiber," as stated in paragraph 358. These pieces of jute bagging seem to be of the same character and dimensions as those passed on

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by the board *In re* Wolff & Co., G. A. 7098 (T. D. 30930), which were stenciled with the word "Harby" and were held to be subject to duty under said paragraph 344 of the tariff act of 1897, which was the same in substance as paragraph 355 of the tariff act of 1909. The testimony in that case is admitted in evidence in this protest. Following that decision, the protests are both sustained and the collector's decision reversed, with instructions to reliquidate the entries accordingly.

(T. D. 31798—G. A. 7255.)

Gum tragasol.

GUM TRAGASOL USED IN DYEING.

Gum tragasol, a gum extracted from the locust bean and used in the process of dyeing, is free of duty under paragraph 499, tariff act of 1909.—Stone & Downer's case, G. A. 6158 (T. D. 26732) distinguished.

United States General Appraisers, New York, August 7, 1911.

In the matter of protests 179290-1412, etc., of Danker & Marston against the assessment of duty by the collector of customs at the port of Boston.

Before Board 3 (WAITE, SOMERVILLE, and HAY, General Appraisers).

HAY, *General Appraiser:* The question presented for our decision by these protests is as to the proper classification for duty purposes of a commodity called tragasol. It appears that this commodity is a gum extracted by some secret and patented process from the locust bean. The collector classified the merchandise and assessed duty thereon under section 6 of the tariff act of 1897 and paragraph 480 of the act of 1909 as a nonenumerated manufactured article, the importers' contention being that the commodity is free of duty under paragraph 482 of the old law, or 499 of the present tariff act, or dutiable as a nonenumerated unmanufactured article.

At the hearing considerable testimony was taken. The claim as a nonenumerated unmanufactured article was practically abandoned, or at least no testimony was offered especially directed to that end.

This commodity was the subject of careful consideration by this board in Stone & Downer's case, G. A. 6158 (T. D. 26732). In that case the merchandise had been classified as in this, but the only claim made in that protest was that the merchandise was free of duty under paragraph 548 of the tariff act of 1897, which corresponds with paragraph 559 of the act of 1909 and which provides for—

Drugs, such as barks, beans, berries, balsams, buds, bulbs, bulbous roots, excrescences, fruits, flowers, dried fibers, dried insects, grains, gums, gum resin, herbs, leaves, lichens, mosses, nuts, nutgalls, roots, stems, spices, vegetables, seeds (aromatic, not garden seeds), seeds of morbid growth, weeds, and woods used expressly for dyeing or tanning. * * *

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In that case we held that the merchandise did not come under this paragraph of the law, saying:

> To bring an article used in dyeing within the meaning of the word "drug," as defined by Webster, we are inclined to think it must be a dyestuff or, in other words, a material which in itself imparts color and not a mere auxiliary agent used in the process of dyeing.

The claim made in the case at bar, however, was not made by the protestants in Stone & Downer's case, *supra*. The duties of the Board of United States General Appraisers are to decide the issue that is formed between the collector and the importer by the protest which the importer files against the collector's action, and in the decision of cases the board does not and should not go outside of the record thus made to indicate what is the correct classification of a commodity before it, unless such classification has been definitely settled by some decision of the board or of the courts in a case wherein they had before them a complete and full record. In the Stone & Downer case, *supra*, we did not affirm the collector's action, but simply overruled the protest upon the ground above stated. That case, therefore, furnishes no precedent to guide us in the decision of this case, except upon the testimony in that case we reached the conclusion that the gum in question was in a crude state. Upon that question we said:

> We think it fair to say that, if any gum can be said to be in a crude state after having been imported, the commodity in question is in that condition. It would not seem to have been advanced in value or condition by "refining" or "grinding," nor do we think by "other process," as there has been nothing done to it except to add a small quantity of some kind of preservative—this of course to preserve it while in shipment. We do not think this advances its value or condition any more than to place a deliquescent commodity in an air-tight container for shipment.

The testimony in this case, in our judgment, should not change the decision there rendered in that respect. The language of the two paragraphs of the law will, however, be observed to be somewhat different. In the drug paragraph of the law of 1897, a commodity to be entitled to free entry must be in a crude state, and this is qualified by the language "not advanced in value or condition by refining or grinding, or by other process," whereas in the paragraph now under consideration, and under which claim is made in this case, the articles therein made free of duty must simply be crude. The testimony in the case at bar shows that this commodity is, as stated, extracted by some secret process from the locust bean, and it is ably contended by the Government counsel that the locust bean *itself* is the crude commodity, and that the gum which is extracted therefrom is not in a crude state. We are not disposed to take this view, as to do so would exclude from the operation of this paragraph many articles that were in every essential particular crude and yet have their

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origin somewhere in the mineral, animal, or vegetable kingdom more remote than the article imported.

It is contended by the Government that the rule laid down by us in Stone & Downer's case, *supra*, that the material must itself impart color, and not be a mere auxiliary agent in the process of dyeing, should be applied to this paragraph of the law. This contention would have greater force were it not that Congress has deliberately used a different preposition in the paragraph of the law here under consideration. In paragraph 559 of the act of 1909 the commodities to be entitled to free entry must be used expressly *for* dyeing or tanning; whereas under paragraph 499 such commodities are entitled to free entry if used *in* dyeing or tanning. But, without resorting to the rule that a doubtful meaning in a tariff law should be construed in favor of the importer, such doubt as we might have upon this question is removed by the previous decisions of this board, one of which is sufficient for us to cite. In Chapel Freres's case, G. A. 6526 (T. D. 27866), it was held that certain sawdust used in dyeing fur, but which did not in any sense impart color, but which was used as an essential part of the process, was entitled to free admission under this paragraph of the law.

The protests are therefore sustained and the collector directed to reliquidate the entries, granting free admission under paragraph 482 of the act of 1897 or paragraph 499 of the act of 1909.

(T. D. 31799—G. A. 7256.)

Sheep dip.

The term "sheep dip" in paragraph 669 of the present tariff act is one without words of limitation or qualification, and accordingly embraces all compounds or preparations known as sheep dip, including such as are derived from coal tar, irrespective of the fact that they may be used for other purposes.

United States General Appraisers, New York, August 7, 1911.

In the matter of protests 386576, etc., of R. Pierson & Co. et al. against the assessment of duty by the surveyor and collector of customs at the ports of St. Louis and New York.

Before Board 1 (SHARRETTS, McCLELLAND, and CHAMBERLAIN, General Appraisers; signed by CHAMBERLAIN and SOMERVILLE, SHARRETTS, G. A., not participating).

CHAMBERLAIN, *General Appraiser:* The issue presented in the cases now before the board is whether the merchandise involved is dutiable at 20 per cent ad valorem under paragraph 15 of the tariff act of 1909 as a coal-tar preparation, as assessed, or is entitled to free entry under paragraph 669 of said act as sheep dip, as claimed by the importers.

The evidence presented warrants the board in finding that the merchandise is a coal-tar preparation and dutiable as assessed unless it be shown that it is also included in paragraph 669 as sheep dip. The

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decisions referred to in support of the Government's contention related to the classification of similar merchandise under the act of 1897. We do not regard these decisions as controlling in the present case, for the reason that under the provisions of paragraph 657 of the act of 1897 compounds or preparations that could be used for other purposes than as a sheep dip were in terms excluded therefrom, while Congress in the present law enacted a provision without words of limitation or qualification admitting free all preparations and substances that are known as sheep dip, regardless of their intended purpose of use. The only evidence presented on behalf of the Government's contention was to the effect that the merchandise was soluble creosote, a coal-tar preparation, while on the other hand there was abundant evidence adduced at the hearing of the cases to prove that the merchandise was in fact sheep dip and so commercially known.

We so find, and hold that under the present act, notwithstanding the fact that the merchandise is a coal-tar preparation, it is more specifically provided for under paragraph 669 than under paragraph 15, and we accordingly sustain the protests, the decisions of the collector and surveyor in each case being reversed.

(T. D. 31800—G. A. 7257.)

Soya cake meal.

1. PARAGRAPH 581, ACT OF 1909, CONSTRUED.

The phrase "used only for manure" in paragraph 581, tariff act of 1909, embraces within its meaning substances used in the manufacture of fertilizer, the word "manure" as used in this act being synonymous with fertilizer.—Shallus *v.* United States (129 Fed. Rep., 845; T. D. 25041).

2. SAME.

The word "substances" as used in this act has a general rather than a special application, and with the words following, which denote the kind of substances, applies generally to commodities of the kind therein described and not to the particular shipment which is the subject of a protest.—Magone *v.* Heller (150 U. S., 70) and Marine *v.* Bartol (6 Fed. Rep., 601).

United States General Appraisers, New York, August 7, 1911.

In the matter of protest 475622 of H. J. Baker & Bro. against the assessment of duty by the collector of customs at the port of Charleston.

Before Board 3 (WAITE, SOMERVILLE, and HAY, General Appraisers).

HAY, *General Appraiser:* Certain soya meal was imported into the port of Charleston, S. C., and assessed by the collector as a nonenumerated manufactured article under paragraph 480 of the tariff act of 1909. The importers contend that the merchandise in question should have been classified under paragraph 581 and admitted free of duty. Paragraph 581 reads as follows:

Par. 581. Guano, manures, and all substances used only for manure, including basic slag, ground or unground, and calcium cyanamid or lime nitrogen.

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A number of witnesses were examined at the hearing, several introduced by the importer and several by the Government. The testimony we think fairly shows that this particular importation of soya meal was used only in the manufacture of fertilizer, but it also shows that soya meal is used as a cattle feed, and, from all of the testimony, we are led to believe that this is its chief use in the country from whence it was imported; and so far as the testimony in this case discloses, the importations to this country have not been of large quantity, or extending over many years; hence its chief use here we think it difficult, if not impossible, under the testimony to determine. There is also some testimony tending to show that this particular importation could have been fed to cattle, but, as stated before, we think, taking the testimony altogether, it fairly shows that the importation in question was not used as a cattle feed, but was used in the manufacture of fertilizer. Fertilizer and manure are practically synonymous words, and have been treated so in the tariff law and decisions thereunder.

In Shallus *v.* United States (129 Fed. Rep., 845; T. D. 25041) the Circuit Court for the District of Maryland held that certain hog hair, consisting of sweepings of factories, which was used as an ingredient in the manufacture of artificial fertilizer, but which was not suitable in its imported condition for a fertilizer, should be classified under paragraph 569 of the tariff act of 1897, which is identical in wording with paragraph 581 of the act of 1909, the court in that case saying:

> The Government, however, contends that the language of paragraph 569, properly construed, does not include substances which by themselves cannot be used for manures, but is limited to those substances which can, in the state in which they are imported, be used only as manure. With this contention I do not concur. I am of opinion that the framers of the law, in providing as they did in paragraph 569 that the articles included under that paragraph should be admitted free of duty, wished to encourage agriculture, or at all events were desirous that no unnecessary burden should be placed upon it. It would, therefore, seem that the paragraph should be so construed as to give effect to its obvious purpose. Where, as in this case, the testimony conclusively establishes that the article brought into the country has no other use or value except that of forming, together with other things, a manure, it seems to me to be within both the spirit and letter of paragraph 569.

One doubtful meaning of this paragraph of the law was therefore settled before it was reenacted, and Congress when reenacting it must therefore, having this decision in mind, have intended this paragraph to include not only substances used in their imported condition for manure, but substances which enter into the manufacture of fertilizer and used only as such.

Another doubtful meaning which must, of necessity, arise from the language used in this paragraph is as to whether or not the word "substances" relates to the particular importation which is under consideration, or is general in its meaning. In Heller *v.* Magone (38

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Fed. Rep., 908) the Circuit Court for the Southern District of New York evidently took the view that the word had a particular application, and the dutiable character of the commodity must be tested by the use to which each particular importation was put. In Schultz *v.* Cadwalader (43 Fed. Rep., 290) the Circuit Court for the Eastern District of Pennsylvania, following Heller *v.* Magone, *supra*, took the same view, and in the instructions to the jury the court used this language:

> So that it may be regarded as properly understood by this act of Congress that, while sulphate of potash is subject to a duty of 20 per cent, yet if it is used for the purposes of manure, it is free from duty. It depends, therefore, upon the use to which the article is to be applied whether it is subject to duty, or falls within the purview of the free list.

Heller *v.* Magone was, however, reversed by the Supreme Court in Magone *v.* Heller (150 U. S., 70), the court evidently in this case taking the view, although not expressly stating it, that the word "substances" is general in its application, and the test is not whether the particular importation is used only for manure, but whether that commodity is commonly, practically, and profitably used for other purposes. This case was followed by the Circuit Court for the District of Maryland in Marine *v.* Bartol (60 Fed. Rep., 601), wherein sulphate of ammonia, though made exclusively from bone, was held to be dutiable as such and that it could not be admitted free of duty as a substance used expressly for manure, even when imported and actually used in the manufacture of fertilizer.

The testimony in this case, in our judgment, does not show that soya cake meal is used only for manure as that phrase as used in paragraph 581 has been construed, and does not bring it within the rule which we understand to be established by Magone *v.* Heller, *supra*, and Marine *v.* Bartol, *supra*. The protest is therefore overruled.

(T. D. 31801—G. A. 7258.)

Furniture in chief value of wool—Ejusdem generis.

The tariff designation in paragraph 378, tariff act of 1909, for "all manufactures of every description made wholly or in part of wool, not specially provided for in this section," is a broad and comprehensive one and is not limited only to articles similar to cloths and knit fabrics. *Held*, furniture composed of wood and wool, wool chief value, is properly dutiable as a manufacture of wool.

United States General Appraisers, New York, August 7, 1911.

In the matter of protest 415088 of Alex. Murphy & Co. against the assessment of duty by the collector of customs at the port of New York.

Before Board 1 (SHARRETTS, MCCLELLAND, and CHAMBERLAIN, General Appraisers; MCCLELLAND, G. A., absent).

CHAMBERLAIN, *General Appraiser:* The merchandise under protest consists of furniture covered with wool tapestry, the tapestry being

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the component material of chief value. Duty was accordingly assessed thereon under paragraph 378 of the tariff act of 1909 as a manufacture of wool at 44 cents per pound and 55 per cent ad valorem, and it is claimed to be dutiable under paragraph 215 at 35 per cent ad valorem as furniture in chief value of wood.

The importers concede in their brief that wood is not the component material of chief value, but claim that the merchandise is nevertheless dutiable as furniture for the reason that under the doctrine of *ejusdem generis* the term "manufactures of" in paragraph 378 is limited only to such manufactures as are similar to cloths and knit fabrics. With this contention we can not agree. The tariff designation in paragraph 378 for "all manufactures of every description, made wholly or in part of wool, not specially provided for in this section" is a broad and comprehensive one and must include, as its express wording requires, *any* manufacture which is not specially provided for and which is wholly or in part of wool. To hold that the doctrine of *ejusdem generis* does apply would be limiting paragraph 378 to cloths and knit fabrics and articles of similar nature, which does not accord with the practice that has prevailed for many years under the different tariff acts and consequently could not have been the intent of Congress to so limit the paragraph.

We find the merchandise in question is not provided for elsewhere than in paragraph 378; that it is a manufacture composed in chief value of wool, and hold it dutiable as assessed. The protest is overruled and the decision of the collector affirmed.

(T. D. 31802—G. A. 7259.)

Scammony resin.

Scammony resin, an article prepared with the use of alcohol and used in the compounding of medicinal preparations, is not dutiable as a medicinal preparation (par. 65); neither is it dutiable as a drug, the proviso to paragraphs 20 and 559 limiting the application of those paragraphs so as to exclude therefrom articles containing alcohol or in which alcohol is used. *Held*, that the merchandise is dutiable at 55 cents per pound by similitude to chemical mixtures, alcoholic, under paragraphs 481 and 3, tariff act of 1909.

United States General Appraisers, New York, August 7, 1911.

In the matter of protests 410492, etc., of Gustav Martin against the assessment of duty by the collector of customs at the port of Boston.

Before Board 1 (SHARRETTS, MCCLELLAND, and CHAMBERLAIN, General Appraisers; MCCLELLAND, G. A., absent).

CHAMBERLAIN, *General Appraiser:* The merchandise covered by these protests consists of scammony resin. In some cases it was returned by the appraiser as a chemical compound, alcoholic, and in other cases as a medicinal preparation, alcoholic, the latter return being based upon the authority of T. D. 30287. The assessment of duty in both cases is the same, namely, at the rate of 55 cents per pound,

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either under paragraph 3 or 65, tariff act of 1909. The merchandise is claimed to be dutiable under paragraph 65 at 25 per cent ad valorem, or under paragraph 20 at one-fourth cent per pound and 10 per cent ad valorem, or free of duty under paragraph 559, or alternatively at 20 per cent ad valorem under paragraph 480 as a nonenumerated manufactured article.

The assessment under paragraph 65 as a medicinal preparation is clearly erroneous, for it has been held in the case of United States *v.* Martin (155 Fed. Rep., 264; T. D. 28145), involving the same article, that scammony resin, being used principally in the compounding of medicinal preparations, was not a medicine in the condition as imported, but was a drug advanced. This decision was acquiesced in by the Government in T. D. 28155. It further follows that protestant's claim under the same paragraph is also untenable.

We are then confronted with the proposition, Has the tariff act of 1909 made any change in paragraph 20 which would alter the classification of the article as decided by the court? A perusal of both paragraphs 20 of the act of 1897 and of the act of 1909 answers the question in the affirmative. Paragraph 20 of the present act contains a proviso which did not appear in paragraph 20 of the act of 1897. This proviso reads as follows:

Provided, That no article containing alcohol, or in the preparation of which alcohol is used, shall be classified for duty under this paragraph.

It is therefore apparent, after an examination of the evidence, that the merchandise can not fall under paragraph 20, for the reason that it is prepared with the use of alcohol. Neither can it fall under paragraph 559 for the same reason, the provisos in paragraphs 559 and 20 being identical.

The claim under paragraph 480 would seem to have more force than the other contentions raised by the importer; but before the merchandise can be found dutiable under paragraph 480 the provisions of paragraph 481 must first be exhausted

It was manifestly the intent of Congress to impose a high rate of duty on articles containing alcohol or in which alcohol is used to compensate for the duty imposed on alcohol. Paragraph 3 provides for chemical compounds, mixtures, and salts, and although the merchandise may not be a chemical compound, mixture, or salt, the use of alcohol on the crude substance unquestionably produces some chemical change, and Congress having specifically provided for articles of such a description when containing alcohol or in which alcohol is used in its production, it would seem that the merchandise in question in material, quality, and use is similar to compounds or mixtures, alcoholic, provided for under paragraph 3 at 55 cents per pound. The collector having assessed that rate on the merchandise, his decision stands affirmed, the protests being overruled.

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(T. D. 31803—G. A. 7260.)

Wool dress goods—Deduction of 5 per cent.

In applying the proviso to paragraph 380, tariff act of 1909, "That on all the foregoing, weighing over four ounces per square yard, the rates of duty shall be five per centum less than those imposed by this schedule on cloths," the 5 per cent in question is to be deducted from the *total amount* of duties and is not to be subtracted from the ad valorem rate.

United States General Appraisers, New York, August 7, 1911.

In the matter of protest 491792 of C. A. Auffmordt & Co. against the assessment of duty by the collector of customs at the port of New York.

Before Board 1 (SHARRETTS, McCLELLAND, and CHAMBERLAIN, General Appraisers; McCLELLAND, G. A., absent).

CHAMBERLAIN, *General Appraiser:* This protest relates to wool dress goods weighing over 4 ounces per square yard, containing a cotton warp. The collector assessed duty thereon under paragraphs 378 and 380 of the tariff act of 1909, which, so far as applicable, read as follows:

378. On cloths, * * * made wholly or in part of wool, not specially provided for in this section, * * * valued at over seventy cents per pound, the duty per pound shall be four times the duty imposed by this section on one pound of unwashed wool of the first-class and fifty-five per centum ad valorem.

380. On women's and children's dress goods, * * * of which the warp consists wholly of cotton or other vegetable material with the remainder of the fabric composed wholly or in part of wool: * * * *Provided*, That on all the foregoing, weighing over four ounces per square yard, the rates of duty shall be five per centum less than those imposed by this schedule on cloths.

The method pursued by the collector in determining the amount of duty was to figure the total amount at the rate of 44 cents per pound and 55 per cent ad valorem, from which amount he deducted 5 per cent, or one-twentieth. The protestants admit that this method is correct so far as it applies to the 44 cents per pound rate, but that it is incorrect as to the 55 per cent ad valorem rate; that in that case 5 per cent should be deducted from 55 per cent, leaving 50 per cent.

This contention is illogical in that it seeks to give one meaning to the proviso in so far as it relates to the specific rate and another when the ad valorem rate is in question. In the brief it is urged that the question is one of differentiation between "rate" and "amount"; that the collector deducted 5 per cent from the amount instead of from the rate, as commanded by the proviso to paragraph 380. It is difficult to understand how different results can be arrived at by deducting 5 per cent from the amount in one case and 5 per cent from the rate in the other case. There can be no difference if each method is pursued with arithmetical correctness. The proviso to the paragraph would be subject to no different construction if, instead of saying "five per cent," it said the equivalent in other terms, namely, one-twentieth.

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Would counsel for the importer under those circumstances contend that the collector was to deduct *one-twentieth* from the specific rate and *one-eleventh*, or 5 per cent, from the ad valorem rate? The ordinary dictionary definition of "five per centum less than" is "one-twentieth less than," and whether applied consistently to all the elements of the compound rate or to the amount the result must be the same.

The protest is overruled and the decision of the collector affirmed.

(T. D. 31804.)

Abstracts of decisions of the Board of General Appraisers.

Board 1—Sharretts, McClelland, and Chamberlain. *Board 2*—Fischer, Howell, and Cooper. *Board 3*—Waite, Somerville, and Hay.

BEFORE BOARD 1, AUGUST 2, 1911.

No. 26228.—CHEMICAL GLASSWARE—GLASSWARE, PARTLY BLOWN.—Protests 286670–26104, etc., of E. H. Sargent & Co. (Chicago). Opinion by Sharretts, G. A.

The merchandise, which was classified as "blown glassware" under paragraph 100, tariff act of 1897, was found to consist of: (1) Cylinders, burettes, Erlenmeyer and other forms of flasks, funnels, desiccators, and other articles composed entirely of blown glass, such grinding as may have been applied thereto being for purposes other than for the fitting of stoppers; (2) dropping and weighing bottles, the same being used as containers for liquids or solids; (3) stopcocks, composed of blown and molded or pressed glass; and (4) one viscosimeter—an instrument designed for testing the viscosity of lubricating oils—composed of blown glass and metal. Protests overruled as to the first finding and sustained as to the other merchandise, which was held dutiable as molded glassware (par. 99) and manufactures of glass or metal (par. 112 or 193). United States *v.* Heil (178 Fed. Rep., 537; T. D. 30492) followed.

No. 26229.—GUT STRINGS.—Protest 535728 of Eugene B. Baehr (New York).

Gut strings which were classified under paragraph 467, tariff act of 1909, as "strings for musical instruments" were held free of duty as catgut, unmanufactured (par. 529).

SHARRETTS, *General Appraiser:* * * * The merchandise in question is comprised in the last seven items on the invoice, and the exhibits in the case show it to be in a condition with regard to quality and finish which indicates that it is commercially unfit for use as strings for musical instruments, and the testimony shows that these strings are imported in coils of 100 feet in length; that they were designed for use as surgical ligatures, and that in tensile strength and finish they are so inferior to the strings suitable for use on musical instruments that their sole practical employment is as ligatures. They are thereby distinguished from the catgut strings passed upon by this board in the matter of protest 463411, G. A. 7250 (T. D. 31785).

We find the merchandise to be catgut in a crude condition, similar to that passed upon by the court in the case of Davies, Turner & Co. *v.* United States (115 Fed. Rep., 232), on the authority of which decision we sustain the protest.

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No. 26230.—Apron Leather.—Protest 417578, etc., of F. L. Roberts & Co. et al. (Boston). Opinion by McClelland, G. A.

Protests sustained as to apron leather. United States *v.* Richards (T. D. 31548) followed.

No. 26231.—Protests Overruled.—Protests 339383, etc., of R. F. Lang et al. (New York). Opinion by McClelland, G. A.

Protests overruled for want of merit.

Before Board 2, August 2, 1911.

No. 26232.—Metal Hoes—Forgings.—Protest 367418 of Alfred Andresen & Co. (Minneapolis). Opinion by Fischer, G. A.

Metal hoes classified as manufactures of metal under paragraph 193, tariff act of 1897, were held dutiable as steel forgings (par. 127), as claimed by the importers. Prosser *v.* United States (T. D. 31551) followed. Note G. A. 7243 (T. D. 31740).

No. 26233.—Cylindrical Metal Containers.—Protests 400584, etc., of F. H. Shallus et al. (Baltimore), protests 410796, etc., of Roessler & Hasslacher Chemical Co. (Boston), protests 436029–3588, etc., of Illinois Central Railroad Co. et al. (New Orleans), protests 406800, etc., of J. J. Buchey & Co. et al. (Philadelphia), protests 431925, etc., of Sucrs. De A Mayol & Co. et al. (San Juan), and protest 493707 of Arnold Hoffman & Co. (Savannah). Opinions by Fischer, G. A.

Cylindrical metal containers classified as cylindrical or tubular vessels under paragraph 151, tariff act of 1909, were held free of duty as the usual containers of free merchandise or dutiable at the rate applicable to their contents. United States *v.* Braun (T. D. 31596) followed.

No. 26234.—Parts of Clocks—"Escapements."—Protest 501559 of American Express Co. (New York). Opinion by Fischer, G. A.

Escapements for clocks, jeweled and constructed upon the lever principle, classified under paragraph 192, tariff act of 1909, as "lever clock movements having jewels in the escapement," were held dutiable as parts of clocks under the same paragraph, as claimed by the importers.

No. 26235.—Filtering Paper.—Protests 472739, etc., of Justinian Caire Co. et al. (San Francisco). Opinion by Fischer, G. A.

Disks cut from filtering paper, ready for use in filtering, classified as a manufacture of filter paper under paragraph 420, tariff act of 1909, were held dutiable as filtering paper (par. 410). Protests sustained. Note Abstract 24511 (T. D. 31182).

No. 26236.—Protests Overruled.—Protests 303775–27128, etc., of American Shipping Co. et al., protest 496768–37521 of C. F. Baum Co., and protests 505426–38081, etc., of Bernard, Judae & Co. (Chicago), protest 489778 of Blake, Moffitt & Towne, and protest 491089 of H. Jevne Co. (Los Angeles), protest 504439–3766 of Illinois Central Railroad Co. (New Orleans), protests 497113, etc., of B. Altman & Co. et al., and protest 484740 of R. F. Lang (New York), and protests 475188, etc., of Atkins, Kroll & Co. et al., and protests 472773, etc., of Zellerbach Paper Co. et al. (San Francisco). Opinions by Fischer, G. A.

Protests overruled for want of merit.

No. 26237.—Protests Overruled.—Protests 156816, etc., of Samuel Eiseman & Co. et al. (New York). Opinion by Howell, G. A.

Protests overruled for want of merit.

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BEFORE BOARD 3, AUGUST 2, 1911.

No. 26238.—PROTESTS OVERRULED.—Protests 469996, etc., of James A. Hayes & Co. et al. (Boston), and protests 472879, etc., of W. H. Jackson Co. et al., and protests 455643, etc., of United States Express Co. et al. (New York). Opinions by Waite, G. A.

Protests overruled for want of merit.

No. 26239.—WASTE RUBBER.—Protest 484292 of R. F. Downing & Co. (Boston), and protest 491167 of J. L. Vandiver (Philadelphia). Opinions by Somerville, G. A.

New cuttings composed of cotton and india rubber, being the waste product from material used in the manufacture of weatherproof goods, and also new rubber balls which have been split and torn, classified under paragraph 479, tariff act of 1909, as waste not specially provided for, were claimed free of duty under paragraph 591 (scrap rubber worn out by use). Protests overruled.

No. 26240.—PROTESTS OVERRULED.—Protest 477506–36344 of Marshall Field & Co., and protest 489759–36604 of Gallagher & Ascher (Chicago), and protests 462953, etc., of Pritchard, Verkruzen & Co. et al. (New York). Opinions by Somerville, G. A.

Protests overruled for want of merit.

No. 26241.—PAPER FANS.—Protest 467753 of Mason Bros. & Co. (Boston). Opinion by Hay, G. A.

Fans made of tissue paper and classified under paragraph 410, tariff act of 1909, as manufactures of tissue paper, were held dutiable as manufactures of paper (420). Protest sustained. Note Downing *v.* United States (141 Fed. Rep., 490; T. D. 26454).

No. 26242.—PHILIPPINE PRODUCTS—DIRECT SHIPMENT.—Protests 424773, etc., of Isler & Guye et al. (New York). Opinion by Hay, G. A.

The importers claimed that Philippine products transshipped at Hongkong constituted a direct shipment within the meaning of section 5, tariff act of 1909, and are therefore entitled to admission free of duty. Protests sustained on the authority of Rhodes *v.* United States (T. D. 31637) and United States *v.* United Cigar Stores Co. (T. D. 31505).

No. 26243.—CLERICAL ERROR.—Protest 460305 of George A. Moore & Co. (San Francisco). Opinion by Hay, G. A.

The board sustained a claim for relief on the ground of clerical error.

No. 26244.—PRINTED SPARK PLUGS.—Protests 461111, etc., of C. B. Richard & Co. (New York).

HAY, *General Appraiser:* The merchandise in question is invoiced as porcelain tubes, but, in the testimony, is generally referred to as china spark plugs. It is a small article of china or porcelain ware covered with a white glaze or enamel, upon which is found in small red letters the words "Made in Germany" and "Rajah." It was assessed for duty by the collector under paragraph 93, which is the paragraph of the act of 1909 made to cover all articles of china, porcelain, etc., which are painted, colored, tinted, stained, enameled, gilded, printed, or ornamented or decorated in any manner.

The testimony tends to show that the words "Made in Germany" are placed upon the article in compliance with law, and the word "Rajah" is a trade-mark. The

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testimony does not definitely show that these words are printed, but apparently they are. However, without considering whether that printing is negligible, we think the commodity in question was properly assessed under the decision of this board in Ways' case, G. A. 7009 (T. D. 30543), and of the Court of Customs Appeals in Frank *v.* United States (T. D. 31633). The protests are therefore overruled.

No. 26245.—PROTESTS OVERRULED.—Protest 486620, of Alfred H. Post & Co. (Philadelphia). Opinion by Hay, G. A.

Protest overruled for want of merit.

BEFORE BOARD 3, AUGUST 7, 1911.

No. 26246.—SUGAR BEETS—VEGETABLES—CHIEF USE.—Protests 332191, etc., and protests 331154, etc., of Michigan Sugar Co. (Detroit and Port Huron).

WAITE, *General Appraiser:* The commodity in question here is sugar beets imported from Canada. They were assessed under paragraph 257 of the act of 1897 as vegetables in their natural state. The importers claim they should be assessed under section 6 of that act as an unenumerated unmanufactured article. The only claim which we deem necessary to consider is the claim of the importers that their chief use excludes them from classification as a vegetable.

These beets are pulled and topped, and after the principal part of the dirt is removed they are imported into the United States. There is no question but that the evidence shows, and general knowledge substantiates the fact, that they are chiefly used for making sugar; that is to say, the sugar is extracted from the beets and sold as such commodity and the refuse is used for various other purposes. We think the testimony shows by a fair preponderance, however, at they are used to a considerable extent for other domestic purposes, to wit, on the table and for the feeding of stock. Beets were not specifically provided for in the tariff act of 1897. It is claimed by the Government that these are described as vegetables in the abovementioned paragraph; but the question arises as to whether their use in the manufacture of sugar distinguishes them any more than their use in the making of soup, or in cooking, or for other culinary purposes. Sugar is a commodity which is entirely used for human food, and we do not think the use of the beet for the manufacture of sugar removes it so far from its use as a vegetable as to warrant us in classifying it, as claimed by the importers, under section 6. As well claim a grape would not be classifiable as fruit because its chief use is in making wine, or that corn should be excluded from the class of cereals because it is chiefly valuable for the purpose of manufacturing starch. The question of the classification of sugar beets was before the board in the cases of Marine Sugar Co., G. A. 5925 (T. D. 26051), and G. A. 6372 (T. D. 27362). We held in those cases that sugar beets were properly classified under paragraph 257, act of 1897. We are still of that opinion. We therefore overrule the protests, affirming the classification made by the collectors.

Decisions on Applications for Rehearing.

No. 26247.—REHEARING DENIED.—Application by the protestants for rehearing on protests 400196–31258, etc. (Chicago), of Butler Bros., decided May 24, 1911, Abstract 25689 (T. D. 31624). No. 290. Before Board 1, June 2, 1911.

Application denied.

No. 26248.—REHEARING DENIED.—Application by the protestant for rehearing on protests 432236, etc. (New York), of M. H. Rogers, decided June 5, 1911, G. A. 7230 (T. D. 31652). No. 304. Before Board 2, July 6, 1911.

Application denied.

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No. 26249.—Rehearing Denied.—Application by the protestants for rehearing on protests 353434-28723, etc. (Chicago), of Gage Bros. & Co., decided June 5, 1911, Abstract 25774 (T. D. 31675). No. 303. Before Board 1, July 7, 1911.

Application denied.

No. 26250.—Rehearing Granted—Olive Oil in Tins.—Application by the protestants for rehearing on protests 257233, etc. (Philadelphia), of J. M. Oliver & Sons, decided June 27, 1911, Abstract 25971 (T. D. 31727). No. 305. Before Board 1, July 17, 1911.

Application granted. Olive oil which was classified as olive oil in tins under paragraph 40, tariff act of 1897, is claimed to be dutiable as olive oil not specially provided for, under the same paragraph.

No. 26251.—Rehearing Granted—Ornamental Leaves.—Application of the protestants for rehearing on protest 473025 (New York) of William Scharrath, decided July 6, 1911, Abstract 26015 (T. D. 31744). No. 306. Before Board 1, July 17, 1911.

Application granted. Merchandise classified under paragraph 438, tariff act of 1909, as ornamental leaves, stems, etc., is claimed to be free of duty as grasses, fibers, or fibrous vegetable substances, crude (par. 578), or as vegetable substances, crude or unmanufactured (par. 630), or dutiable under various other paragraphs.

No. 26252.—Rehearing Granted—Prismatic Gauge Glasses.—Application by the Government for rehearing on protest 368439 (Bridgeport) of Ashcroft Manufacturing Co., decided July 8, 1911, Abstract 26029 (T. D. 31744). No. 308. Before Board 1, July 24, 1911.

Application granted. The board found the merchandise to consist of prismatic gauge glasses and held the same dutiable under paragraph 110, tariff act of 1897, as strips of glass ground to a prismatic form. The Government contends that the merchandise is tubular gauge glasses and was properly classified by the collector as ground glass (par. 100).

No. 26253.—Rehearing Granted—Chemical Mixture—Soap.—Application by the protestants for rehearing on protest 423218 (New York) of Farbenfabriken of Elberfeld Co., decided June 23, 1911, Abstract 25953 (T. D. 31720). No. 307. Before Board 1, July 31, 1911.

Application granted. Merchandise classified as a chemical mixture, alcoholic, under paragraph 3, tariff act of 1909, is claimed to be dutiable as soap (par. 69).

No. 26254.—Rehearing Denied.—Application by the protestant for rehearing on protests 490661, etc. (New York), of A. T. Otto, decided July 22, 1911, Abstract 26189 (T. D. 31774). No. 309. Before Board 3, August 2, 1911.

Application denied.

No. 26255.—Rehearing Granted—Cricket Bats.—Application of the Government for rehearing on protest 447041 (New York) of F. L. Slazenger, decided July 14, 1911, Abstract 26107 (T. D. 31735). No. 311. Before Board 1, August 2, 1911.

Application granted. The question at issue is whether cricket bats reported by the appraiser to be made in chief value of willow are dutiable as manufactures of willow under paragraph 212, tariff act of 1909, or as manufactures of wood (par. 215).

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No. 26256.—REHEARING GRANTED—STEARIN.—Application of the protestants for rehearing on protest 489265 (New York) of A. Klipstein & Co., decided July 14, 1911, Abstract 26113 (T. D. 31757). No. 312. Before Board 1, August 2, 1911.

Application granted. Merchandise classified as grease not specially provided for under paragraph 3, tariff act of 1909, is claimed to be dutiable under paragraph 290 (wool grease), or free of duty under paragraph 559 (crude drug) or 580 (grease used in soap making, etc.).

No. 26257.—REHEARING GRANTED—HATPINS—CUT-PASTE ARTICLES.—Application of the protestants for rehearing on protest 412806–32013 (Chicago) of Charles D. Stone & Co., decided July 19, 1911, Abstract 26155 (T. D. 31774). No. 313. Before Board 1, August 2, 1911.

Application granted. Merchandise reported by the appraiser to consist of hatpins set with imitation precious stones and classified as articles of personal adornment under paragraph 448, tariff act of 1909, is claimed to be dutiable as manufactures of glass or metal (pars. 109 or 199).

(T. D. 31805.)

Memorandum of decisions, Court of Customs Appeals.

SUITS DISMISSED.

[Omitted from this edition.]

(T. D. 31806.)

Leather.

Classification of leather, scrap leather, and waste.

TREASURY DEPARTMENT, *August 7, 1911.*

SIR: The department duly received your letter of June 30 last, relative to the classification of scrap leather imported for the purpose of being used in the manufacture of pressboard.

In reply, I have to advise you that the classification of so-called scrap leather for the assessment of duty depends upon the exact character thereof. If consisting of pieces of dressed leather, calfskins tanned or tanned and dressed, sheep and goat skins dressed and finished, or other skins, or bookbinder's calfskins large enough to be used as leather, the department is of the opinion that it would be dutiable at the rate of 15 per cent ad valorem under the provisions of paragraph 451 of the tariff act. If consisting of band, bend, or belting leather, rough leather, or sole leather large enough to be used as leather, the department is of the opinion that it would be dutiable at the rate of 5 per cent ad valorem under the said paragraph. If consisting of scraps not large enough to be used as leather, whether such scraps consist of finished leather or otherwise, the department is of

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the opinion that such merchandise would be dutiable as waste at the rate of 10 per cent ad valorem under paragraph 479 of the said act.

Leather board, composed of compressed leather, made cohesive by the use of starch or other substance and pressed into sheets, would be dutiable as leather under paragraph 451 of the tariff act at the rate of 15 per cent ad valorem, following the decision of the Board of United States General Appraisers in T. D. 25021 of February 16, 1904 (G. A. 5589).

Respectfully, JAMES F. CURTIS,
(68333.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 31807.)

Drawback on bromangelon.

Drawback on bromangelon manufactured by the Stern & Saalberg Co., of New York City, with the use of imported gelatin and refined sugar produced from imported raw sugar.

TREASURY DEPARTMENT, *August 10, 1911.*

SIR: Drawback is hereby allowed under section 25 of the tariff act of August 5, 1909, and the department's regulations promulgated thereunder (T. D. 31695 of June 16, 1911), on bromangelon manufactured by the Stern & Saalberg Co., of New York City, with the use of imported gelatin and refined sugar produced from imported raw sugar.

The quantities of imported materials which may be taken as the basis for the allowance of drawback may equal those used as declared in the drawback entry, provided they shall not exceed 6.57 per cent of the net export weight in the case of the gelatin and 92 per cent of such weight in the case of the refined sugar. The quantity of raw sugar shall be estimated in accordance with T. D. 20174.

The manufacturers' sworn statement dated June 23, 1911, is inclosed herewith for filing in your office.

Respectfully, JAMES F. CURTIS,
(86938.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 31808.)

Appointment of deputy collector of customs at La Crosse, Wis.

TREASURY DEPARTMENT, *August 9, 1911.*

To collectors of customs and others concerned:

The appended copy of letter authorizing the appointment of a deputy collector of customs at La Crosse, Wis., is published for your information and guidance.

JAMES F. CURTIS, *Assistant Secretary.*

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TREASURY DEPARTMENT, *August 4, 1911.*

SIR: Under the provisions of the act of Congress entitled "An act to prescribe the duties of deputy collectors of customs," approved February 6, 1907, a copy of which is inclosed herewith, you are hereby appointed a deputy collector, Class A, excepted position, at La Crosse, Wis., with compensation at the rate of $300 per annum, the appointment to take effect from date of oath.

You will accordingly enter into bond with the United States in the penal sum of $2,000, in accordance with the forms herewith inclosed and the rules regulating the execution thereof, and return the same to this office at your earliest convenience for examination, approval, and file.

As soon as your bond has been approved you will be authorized to qualify as deputy collector.

You will report through the office of the collector of customs at Milwaukee, Wis., in accordance with the provisions of the above-named act.

Respectfully,

FRANKLIN MACVEAGH, *Secretary.*

Mr. JOHN S. MEDARY,
Deputy Surveyor of Customs, La Crosse, Wis.

(T. D. 31809—G. A. 7261.)

Articles of personal adornment.

1. Imitation of precious stones, including so-called semiprecious stones, set in metal, forming parts of hatpins and other articles of personal adornment, valued at more than 20 cents per dozen pieces, are dutiable at 85 per cent ad valorem under paragraph 448, tariff act of 1909.

2. Millinery and dress ornaments composed in chief value of silk, straw, beads, or metal thread, having imitation precious stones sewed, pasted, or glued to the fabric, *Held* not to be set, and are not dutiable under paragraph 448, but at the rate applicable to their component material of chief value.

3. Millinery ornaments set with both imitation jet and other imitation precious stones, imitation jet the component material of chief value are not dutiable under paragraph 448.

4. Millinery ornaments composed of straw, imitating feathers, are dutiable as artificial feathers at 60 per cent ad valorem under paragraph 438.

United States General Appraisers, New York, August 8, 1911.

In the matter of protests 422886-33286, etc., of Gage Bros. & Co. against the assessment of duty by the collector of customs at the port of Chicago.

Before Board 1 (SHARRETTS, MCCLELLAND, and CHAMBERLAIN, General Appraisers; MCCLELLAND, G. A., absent).

SHARRETTS, *General Appraiser:* The merchandise covered by these protests consists of the following articles, viz: (1) Dress ornaments composed in chief value of silk, having pasted thereon an imitation precious stone; (2) millinery ornaments in the form of buckles, composed in chief value of straw, ornamented severally with a small imitation precious stone, pasted upon buckram, which forms the foundation of the buckle; (3) millinery ornaments of brass set with both imitation jet and imitation precious stones not jet, the imitation jet being of greater value than either of the other component parts;

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(4) cabochons and other millinery ornaments composed in chief value of metal thread, ornamented with an imitation precious stone (not imitation jet) sewn or pasted upon a buckram backing; (5) millinery ornaments composed wholly or in chief value of brass or brass set with imitation precious stones; (6) hatpins with steel shafts and heads made of glass or paste imitating a single pearl, diamond, or other precious stone, set in a metal cuff or cap; the shaft of the hatpin extends through this cap and is fitted permanently into a hole in the head of the pin by gluing, cementing, or soldering; (7) artificial feathers composed of straw and natural quills identical with those held by this board in protest 429666 to be dutiable at 60 per cent ad valorem under paragraph 438 of the tariff act of 1909; (8) millinery ornaments composed in chief value of beads, having imitation precious stones sewn to the buckram foundation thereof.

All of the foregoing merchandise was assessed with duty at a rate equivalent to 85 per cent ad valorem under paragraph 448 of the tariff act of 1909, except the artificial feathers, which were assessed at 60 per cent ad valorem under paragraph 438.

The argument advanced in behalf of the importers that the provision for articles set with imitation precious stones applies only to articles set with imitation diamonds, rubies, sapphires, or emeralds needs hardly to be taken seriously. Regarding entries dating as far back as 1890, the Circuit Court of Appeals, Second Circuit, in Hahn *v.* United States (100 Fed. Rep., 635), held that the term "precious stones" embraced not only the diamond, sapphire, pearl, opal, and turquoise, but also the garnet, beryl, topaz, rock crystal, etc. Under three successive tariff acts the court's interpretation in the case cited of the meaning of the term "precious stones" has been accepted as conclusive and controlling. During a like period it has been held by the Board of General Appraisers and the courts that the term "imitation precious stones" had a commercial meaning that included imitations of every description of precious stones, even such as were very poor imitations thereof. Because Congress, probably out of abundant precaution, provided for both the superior and inferior grades of precious stones under the designation of precious and semi-precious stones, is hardly a cogent reason for departing from a practice so long followed and acquiesced in. It is not conceivable that Congress intended the involved clause in paragraph 448 to be construed as if reading articles of personal adornment set with imitation diamonds, rubies, sapphires, and emeralds (except imitation jet). We can reach no such conclusion and dismiss the importers' claim based upon such a principle.

Nor can we concur in the soundness of the importers' contention that the word "set" must be given the restricted meaning applied thereto by jewelers accustomed to setting in precious metals, diamonds

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rubies, sapphires, emeralds, and pearls. The term "set" has a different and more extended meaning among manufacturers of cheap jewelry, and it is this class of jewelry that paragraph 448 treats of, except in the last clause, that has no application to the present case. Millinery ornaments, pins, brooches, buckles, etc., costing as little as 1¾ cents each can not profitably be set with imitation precious stones by skilled labor such as is employed in setting genuine precious stones. In our opinion cheap jewelry and articles of the description provided for in the first clause of paragraph 448 are "set" when each stone is permanently fastened in metal to display it. This conclusion is justified by years of observation and the consideration of litigated cases involving the classification of millinery ornaments and cheap jewelry, and accords with the dictionary definition of the word "set":

Standard:

Set.—To place in a frame or mounting; fasten or partially inclose, as a gem, in gold, silver, or other metal so as to at once support and display it.

Webster:

Set.—To fix, as a precious stone in metal; to fix in metal; hence, to place in or amid something which embellishes and shows off.

The hatpins included in class 6 are ornamented with imitation precious stones fixed in and partly surrounded by a brass cap, and we find they and also the ornaments described in class 5 are articles of personal adornment valued at more than 20 cents per dozen pieces set with imitation precious stones, not imitation jet, or composed wholly or in chief value of brass, and hold they were correctly classified and assessed with duty by the collector, whose decision relative thereto, as also his decision with regard to the artificial feathers included in class 7, is affirmed, the protests covering said articles being overruled.

We next turn to a consideration of (*a*) millinery ornaments composed in chief value of straw and metal threads respectively, having imitation precious stones composed of paste (not imitation jet) pasted or sewn thereon, and (*b*) millinery ornaments set severally with both imitation jet and imitation precious stones other than jet. Within the popular understanding precious stones and imitations thereof are only set when fixed in or partly surrounded by metal, and there is no evidence before the board that the commercial understanding differs from the lexicographer's definition of the word "set," and, in the absence of proof, we must presume that such is not the fact. Indeed, a careful study of paragraph 448 leads us to conclude that Congress intended that imitation precious stones set included only such as were set in metal. The paragraph cited, after enumerating a long list of articles, imposes a duty of 85 per cent thereon if "set with imitation precious stones composed of glass or paste (except imitation jet) or if composed wholly or in chief value of silver, German silver, white

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metal, brass, or gun metal." The juxtaposition of the two provisions taken in conjunction with the fact that the entire paragraph deals exclusively with wares composed wholly or in part of metal, coupled with the further provision for all stampings and materials of metal or of *metal set with glass or paste for use in the manufacture of any of the foregoing articles*, is very persuasive of congressional intent to limit the application of the words "set with imitation precious stones" to such as are set in metal, regardless of whether metal or imitation precious stones is the component of chief value. In G. A. 7195 (T. D. 31448) this board, in passing upon certain articles of personal adornment set with imitation precious stones that were actually set in metal, said that all articles of personal adornment valued at not less than 20 cents per dozen pieces (except such as are commonly and commercially known as jewelry composed of gold or platinum) if set with imitation precious stones composed of glass or paste (except imitation jet), without regard to the materials of which the articles were composed or the relative value of the component parts, were dutiable at 85 per cent ad valorem under paragraph 448. It was not intended to make the scope of the decision as broad as the language thereof would seem to warrant, for, although holding then, as we now do, that imitation precious stones, set, have to be fixed or fastened in metal, there are many articles *ornamented* with imitation precious stones that are not set with imitation precious stones, although the stones themselves may be set. This board reached a like conclusion in G. A. 7097 (T. D. 30929), wherein it was held that silk gowns ornamented with imitation precious stones were not set with such stones. The rule of construction adopted by the board and acquiesced in by the Treasury Department is that only articles of a kindred nature therein enumerated in paragraph 448 are included in the provisions thereof. Millinery ornaments are denominatively provided for in paragraph 448. Some of those here in question, however, lack the essential requirement of being either set with imitation precious stones or composed wholly or in chief value of silver, German silver, white metal, brass, or gun metal.

Regarding the millinery ornaments composed of iron or steel set with imitation jet and also imitation precious stones, of which imitation jet is of far greater value than the other two materials combined, we hold that inasmuch as they are excluded from paragraph 448 as articles set with and composed in chief value of imitation jet, and, not being composed in any part of silver, German silver, white metal, brass, or gun metal, they do not fall for duty as returned by the collector under paragraph 448. Aside from the fact that the frames of the articles in question are iron or steel, and not either or any of the metals named in paragraph 448, we think that the classification of such articles depends upon which of the two substances, namely, imitation jet or

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imitation precious stones other than jet, is the greater in value. In accordance with the views herein expressed, we sustain the claim in the protests that the merchandise of the description included in classes 1 and 8 is dutiable at 60 per cent ad valorem under paragraphs 402 and 421, respectively, class 2 at 35 per cent ad valorem under paragraph 463, class 3 at 45 per cent ad valorem under paragraph 109, and that included in class 4 at 15 cents per pound and 60 per cent ad valorem under paragraph 179 of the tariff act of 1909 as per schedule annexed. As to all other goods and in all other respects the protests are overruled. The collector's decision is modified accordingly.

(T. D. 31810—G. A. 7262.)

Precipitated carbonate of baryta—Chemical salt.

The provision for witherite in paragraph 711, tariff act of 1909, is limited in its application only to the natural crude mineral ore, and does not include precipitated carbonate of baryta, which, being a chemical salt, is provided for under paragraph 3 of said act at 25 per cent ad valorem.

United States General Appraisers, New York, August 8, 1911.

In the matter of protests 427436, etc., of Gabriel & Schall against the assessment of duty by the collector of customs at the port of New York.

Before Board 1 (SHARRETTS, MCCLELLAND, and CHAMBERLAIN, General Appraisers; MCCLELLAND, G. A., absent).

CHAMBERLAIN, *General Appraiser:* The question at issue is whether certain precipitated carbonate of baryta is dutiable as a chemical salt under paragraph 3, tariff act of 1909, at 25 per cent ad valorem as assessed, or free of duty under paragraph 711 of said act as witherite, as claimed by the importers.

The importers have submitted these cases on the record made in the case of United States *v.* Gabriel & Schall (T. D. 31108), and were the tariff act of 1897 still in force we would not hesitate in sustaining the claim in the protests. But a different state of facts exists in the case at bar.

Paragraph 489 of the tariff act of 1897 reads as follows:

489. Baryta, carbonate of, or witherite.

Paragraph 711 of the present tariff reads:

711. Witherite.

In order for the importers to succeed it must be shown that the precipitated carbonate of baryta and witherite are one and the same thing. Witherite is a natural mineral ore, a natural carbonate found in the southern part of Scotland. It is a crude article containing impurities such as calcium carbonate, silica, and iron. Precipitated car-

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bonate of baryta, on the other hand, is a highly refined article, artificially made, uniform and white in appearance. The evidence further discloses the fact that commercially precipitated carbonate of baryta and witherite are two distinct articles. An order for witherite would not be filled by substituting precipitated carbonate of baryta. Neither are the substances chemically alike.

A further cogent reason assignable why the claim of the protestants can not be sustained is the fact that in enacting the provision for witherite the framers of the present tariff act no doubt had in mind the decision of the court in Gabriel *v.* United States (121 Fed. Rep., 208), wherein it was held that precipitated carbonate of baryta was free under the provisions of the law then in force for carbonate of baryta, and in order to remedy the defect Congress eliminated the provision for carbonate of baryta and merely provided for witherite, the natural crude mineral ore.

We find the merchandise in question to be a chemical salt, not witherite, and hold it dutiable as assessed.

The protests are overruled and the decision of the collector in each case is affirmed.

(T. D. 31811—G. A. 7263.)

Woolen overcoat lined with fur.

A woolen overcoat lined with fur, fur being the component material of chief value, is dutiable under paragraph 439, tariff act of 1909, as wearing apparel in chief value of fur, and not under paragraph 382 as wearing apparel in part of wool, the former provision being more specific than the latter.

United States General Appraisers, New York, August 8, 1911.

In the matter of protest 453649 of A. J. Woodruff & Co. against the assessment of duty by the collector of customs at the port of New York.

Before Board 1 (SHARRETTS, McCLELLAND, and CHAMBERLAIN, General Appraisers; McCLELLAND, G. A., absent).

CHAMBERLAIN, *General Appraiser:* The merchandise under protest consists of a woolen overcoat lined with fur, fur being the component material of chief value. The collector assessed a duty of 44 cents per pound and 60 per cent ad valorem under paragraph 382 of the tariff act of 1909, basing his action on the ground that as the provisions for wool wearing apparel and that for fur wearing apparel were equally specific, the higher rate is applicable in accordance with the provisions of paragraph 481 of said act. The coat is claimed to be dutiable under paragraph 439 at 50 per cent ad valorem as wearing apparel composed in chief value of fur.

The provision for wearing apparel composed of or of which fur is the component material of chief value is new matter that did not appear in the act of 1897, and the question to be determined is whether the

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provision for wearing apparel in part wool is more specific than that for wearing apparel in chief value of fur.

Where two paragraphs in a tariff act provided a rate of duty applicable to the same class of merchandise, the pertinent provision in one being in the words "in chief value of" and in the other "in part of," the authorities are unanimous that the former provision is more specific than the latter, and it therefore follows that wearing apparel, although in part of wool, if composed in chief value of fur, is dutiable under paragraph 439 and not under paragraph 382, the provision for wearing apparel in chief value of fur being more specific than that for wearing apparel in part wool. Hartranft *v.* Meyer (135 U. S., 237); United States *v.* Walsh (154 Fed. Rep., 770; T. D. 28325); and United States *v.* Johnson (157 Fed. Rep., 754; T. D. 28516).

On the authorities of these cases, we hold that the merchandise in question is more specifically provided for under paragraph 439 than under paragraph 382, and hence the provision of paragraph 481 has no application in the present case.

The protest is sustained and the decision of the collector reversed.

(T. D. 31812—G. A. 7264.)

Antiques in bond—Compliance with Treasury Regulations.

The regulation of the Secretary of the Treasury (T. D. 29958) relating to antiques is reasonable and must be complied with to entitle merchandise to free entry under paragraph 717, tariff act of 1909, where the goods were entered for warehousing prior to August 5, 1909, and withdrawn after said regulation was promulgated.

United States General Appraisers, New York, August 14, 1911.

In the matter of protest 404555 of S. & G. Gump Co. against the assessment of duty by the collector of customs at the port of San Francisco.

Before Board 3 (WAITE, SOMERVILLE, and HAY, General Appraisers).

WAITE, *General Appraiser:* The goods in question here are certain so-called antiques and works of art imported from China. They were assessed under the various appropriate paragraphs of the law of 1909; they are claimed to be free of duty by reason of the provisions of paragraph 717, on the theory that they have been in existence for 100 years prior to their importation and were such articles as are provided for in the last part of said paragraph. This case was submitted originally upon the record and the protest was overruled. A motion for rehearing was granted, which has been held, and at which rehearing considerable testimony was introduced showing the nature of the goods, which probably removes one of the reasons for overruling the protest in the original case. The sole question here is whether it was necessary to comply with the regulations promulgated by the Secre-

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tary of the Treasury under the provisions in said paragraph 717, and whether in fact they were complied with.

It appears from the record that these goods came into the port of San Francisco on July 27, 1909, and were entered for warehouse on July 31. They were withdrawn from warehouse at various times on withdrawal entry, certain cases of them on the 15th of September, 1909, others on November 11, 1909, and the last of the goods on January 6, 1910. Under the authority given in paragraph 717 the Secretary of the Treasury promulgated certain regulations governing the entry of this class of goods, which went into effect on the 20th of August, 1909, previous to the time when the first of the goods in question were withdrawn from warehouse and entered into consumption. The regulation (T. D. 29958) provides how proof of antiquity shall be made, to wit, by the production upon entry of (1) an affidavit of the ultimate consignee stating that he has investigated the origin and history of the articles and believes the same to have been produced more than 100 years prior to their importation; (2) a declaration of the foreign seller or shipper, certified by the United States consul at the place of shipment, stating the name of the producer of such articles and the date and place of their production, and also stating the name and residence of the person from whom and the date when such seller or shipper acquired the same; providing, however, that if such seller or shipper is not in possession of all of such facts he may state, in lieu thereof, such other facts as may be in his possession tending to show that such articles were produced more than 100 years prior thereto.

These regulations have been held by the board to be reasonable, and in order to entitle the importer to free entry must be complied with. The importers in this case, admitting that the regulations have not been strictly complied with, in that they failed to file or produce said affidavit and declaration at the time of entry, still insist that, as the goods were entered for warehouse previous to the passage of the the law of 1909, under which the final entry was made, they could not have been expected to produce the affidavits in accordance with the regulations; and they further claim it was sufficient to produce the affidavits when they did, which was some time subsequent to the time of withdrawal from warehouse, it not appearing exactly at what time they were filed among the papers in this case, but the date of the affidavit of the foreign shipper is October 12, 1909, and that of the owner November 12, 1909. The regulation does not specify which entry is intended when it requires the production of this proof "upon entry." We are constrained to hold in this case that the entry intended was the entry on withdrawal from warehouse when the goods went into consumption. The date of withdrawal, of course, is entirely at the will of the importer. When the withdrawal was made the regulation was in force, and the importers had the same notice that any other

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importer would have of the existence of the law and regulation upon bringing goods into the country. Had they seen fit, they might have postponed the withdrawal from warehouse in this case to such a date as would have given ample time to produce the required proof. This they failed to do; hence we must hold that the regulations were not complied with and free entry must be denied. The protest is therefore overruled.

(T. D. 31813.)

Abstracts of decisions of the Board of General Appraisers.

Board 1—Sharretts, McClelland, and Chamberlain. *Board 2*—Fischer, Howell, and Cooper. *Board 3*—Waite, Somerville, and Hay.

BEFORE BOARD 2, AUGUST 8, 1911.

No. 26258.—PRINTED PAPER LABELS.—Protests 514710, etc., of American Thread Co. (Boston).

FISCHER, *General Appraiser:* The articles here in question are invoiced as "Alexander's cerise ball circles," and consist of printed paper labels, circular in shape, having a diameter of about seven-eighths of an inch. Duty was assessed thereon at the rate of 30 cents per pound under the provisions of paragraph 412, tariff act of 1909, as lithographically printed paper articles.

It appears clear that the paper labels are not printed by lithographic process, and it was error to classify the merchandise under paragraph 412. The only claim raised by the protests is that the labels are dutiable at 35 per cent ad valorem under the provision in paragraph 415, which reads:

Provided, That paper embossed, or cut, die cut, or stamped into designs or shapes, such as initials, monograms, lace, borders, bands, strips, or other forms, or cut or shaped for boxes, plain or printed but not lithographed, and not specially provided for in this section, shall be dutiable at thirty-five per centum ad valorem.

The board has ruled that the above proviso has no application to sheets of plain paper cut to circular form. Abstract 25522 (T. D. 31568). The articles we have here before us are ordinary printed labels, circular in form and cut from paper. We do not regard that either the assessed nor the claimed rate provides the proper classification for this class of printed matter. The protests are overruled, and the decisions of the collector will stand.

BEFORE BOARD 3, AUGUST 8, 1911.

No. 26259.—PROTESTS ABANDONED.—Protests 529894, etc., of American Sugar Refining Co. et al. (Boston).

Protests abandoned.

BEFORE BOARD 1, AUGUST 9, 1911.

No. 26260.—CATGUT, UNMANUFACTURED—VIOLIN STRINGS.—Protest 423772 of Mark W. Selby (New York).

Merchandise classified as strings for musical instruments under paragraph 467, tariff act of 1909, and imported in lengths of 115 inches were claimed to be free of duty as catgut, unmanufactured (par. 529).

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SHARRETTS, *General Appraiser:* * * * Two questions are therefore presented for determination: Is the catgut in the condition in which imported commercially suitable for use as strings for musical instruments, and if not, has it been advanced beyond the condition of crude catgut by any process of manufacture?

The testimony shows that the strings in issue are not of uniform gauge and that the surfaces thereof are rough, requiring a material expenditure of labor thereon before the articles appear in trade as strings for musical instruments, and that they are in the crudest condition in which catgut is imported. In addition to grinding and polishing the strings subsequent to importation, they undergo a further process of damp-proofing, rendering them less susceptible to climatic change and moisture than strings that have not been subjected to that process, and it is further shown that they are not of the standard thickness of violin A, E, and D strings, as measured by a universal gauge for violin strings.

In G. A. 6533 (T. D. 27884) it was held that blown-glass tubing not advanced to the condition of finished articles was not dutiable as blown glassware, although composed wholly of blown glass. Upon review of an unpublished decision of the board following G. A. 6533, *supra*, in the case of United States *v.* Heil Chemical Co., the United States Circuit Court for the Eastern District of Missouri affirmed the board's ruling as to blown-glass tubing, and the decision of the circuit court in regard to that merchandise was upon appeal in turn affirmed by the Circuit Court of Appeals, Eighth Circuit. See Heil *v.* United States (T. D. 29205) and United States *v.* Heil (178 Fed. Rep., 537; T. D. 30492). In the case of Fenton *v.* United States (T. D. 31546) the United States Court of Customs Appeals, in holding that pieces of cork roughly shaped but not reduced to a condition where they became finished cork floats ready for use by anglers were not dutiable as fishing tackle or parts thereof, adopted the view taken by the United States Supreme Court in Tide Water Oil Co. *v.* United States (171 U. S., 210, 216) and United States *v.* Dudley (174 U. S., 670), that merchandise to which a degree of labor has been applied merely putting it in condition to be used as raw material for the next process in rank does not become the final product until the various successive processes of manufacture to which it must be subjected has been applied to it. Based on the evidence and on the authority of the principle enunciated in the decisions cited, we find that the catgut now before us is not strings for musical instruments but is material for use in the manufacture of such strings, in which respect it is differentiated from the catgut strings passed upon by this board in the matter of protest 463411 of C. B. Richard & Co., G. A. 7250 (T. D. 31785). We further find on the evidence and the exhibits in the case that the merchandise in question is crude catgut unmanufactured, and hold it is entitled to free entry under paragraph 529 of the present tariff act.

The protest is accordingly sustained and the decision of the collector is reversed.

No. 26261.—KIPPERED HERRING.—Protest 476641 of Arbuckles & Co. (Pittsburgh), protest 478846 of National Grocery Co. (Port Townsend), and protest 476907 of Wieland Bros. (San Francisco). Opinions by Chamberlain, G. A.

Protests sustained as to kippered herring on the authority of United States *v.* Rosenstein (T. D. 31357).

No. 26262.—SARDELS.—Protest 334887 of Vandever & Schroeder (St. Paul).

Sardels classified as fish in packages of less than one-half barrel, under paragraph 258, tariff act of 1897, were claimed to be dutiable as "herrings, pickled or salted" (par. 260).

CHAMBERLAIN, *General Appraiser:* * * * Sardels are provided for *eo nomine* in paragraph 258. Assuming that sardels are included within the term "herrings," it is our opinion that the provision for "sardels" is more specific than that for "herrings." The question then to be determined is whether sardels in packages of less than one-

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half barrel are covered by the provision for "fish known or labeled as * * * sardels * * * in other packages, 40 per centum ad valorem," or by the provision for "fish in packages containing less than one-half barrel, and not specially provided for in this act."

In Strohmeyer *v.* United States (176 Fed. Rep., 268; T. D. 30390) the court, in passing upon sardines in large tins, stated as follows:

The provisions as to sardines in this paragraph (258) are comprehensive. When packed in bottles, jars, tin boxes, or cans of various specified sizes, various specific duties are imposed; when they are in other packages a general ad valorem duty is applied. The phrase "in other packages" is broad enough to cover packages of the same class as those enumerated, *and also packages of a different class—wooden boxes, wicker baskets, or what not.*

It is therefore apparent that the merchandise here in issue falls within the provision for "sardels * * * in other packages," and we so hold. We hold the merchandise to be dutiable at 40 per cent ad valorem, and overrule the protest without affirming the action of the collector.

No. 26263.—Vaccines.—Protests 496966, etc., of T. H. Moore (New York). Opinion by Chamberlain, G. A.

Protests sustained as to various kinds of vaccines, on the authority of G. A. 6836 (T. D. 29407).

No. 26264.—Ground Gypsum.—Protest 493389 of W. H. Kemp & Co. (New York). Opinion by Chamberlain, G. A.

Merchandise described on the invoice as sulphate of lime was classified as artificial sulphate of lime under paragraph 44, tariff act of 1909. The board found it to be gypsum, ground (par. 88), as claimed by the importers.

No. 26265.—Fish in Packages.—Protests 294316, etc., of Ishimitsu & Co. et al. (Los Angeles), and protest 318700 of Nippon Trading Co. (Port Townsend). Opinions by Chamberlain, G. A.

Protests sustained as to dried fish in 1-pound packages, on the authority of the United States *v.* Yamashita (T. D. 31435).

No. 26266.—Salted Herrings.—Protest 193952 of Wieland Bros. (San Francisco).

Salted herrings classified under paragraph 258, tariff act of 1897, as fish in packages of less than one-half barrel were held dutiable as herrings, salted (par. 260), as claimed by the importers.

Chamberlain, *General Appraiser:* The protest is sustained, the *eo nomine* provision for herrings, salted, being more specific than the provision for "fish in packages containing less than one-half barrel." Note G. A. 4962 (T. D. 23176).

No. 26267.—Wool Dress Goods.—Protest 486312 of E. Deutsch (New York). Opinion by Chamberlain, G. A.

Goods described on the invoice as Pekin melange were held dutiable as wool dress goods under paragraph 380, tariff act of 1909, as claimed by the importer, rather than as manufactures of wool (par. 378).

No. 26268.—Saponine.—Protest 486849 of Merck & Co. (New York). Opinion by Chamberlain, G. A.

Saponine classified as a chemical compound under paragraph 3, tariff act of 1909, was held dutiable as a nonenumerated manufactured article (par. 480), as claimed by the importer, the collector expressing willingness to reliquidate.

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No. 26269.—Dog Grass—Crude Drug.—Protests 446279, etc., of Parke, Davis & Co. (New York). Opinion by Chamberlain, G. A.

Dog grass classified as a drug advanced in value or condition under paragraph 20, tariff act of 1909, was claimed to be free of duty as a drug in a crude state (par. 559). Protests sustained. Note G. A. 4952 (T. D. 23142).

No. 26270.—Wool Coat Lining.—Protests 442354, etc., of Frank & Lambert (New York).

A fabric having a cotton warp and wool weft and weighing under 4 ounces per square yard, classified as coat lining under paragraph 380, tariff act of 1909, was claimed to be dutiable as a manufacture of wool (par. 378).

Chamberlain, *General Appraiser:* * * * The evidence shows that the fabric in question is known as "Canton checks." There is nothing, however, to indicate whether or not it is known in trade as a lining. A representative of the importing firm testified that the material in question was used in the manufacture of waterproof cloth, the same consisting of two layers of cloth united with rubber. The article here in question is intended to form the inner layer. The evidence introduced by the importers was directed solely to showing the use to which they put the merchandise. A Government witness testified that he manufactured waterproof cloth and that he bought fabrics like those imported as "linings" from the lining trade. The record is meager, and in our opinion does not warrant a disturbance of the collector's classification, for, admitting that the use to which the *particular* merchandise was put was not that of a lining, actual proof would nevertheless be necessary to show that the merchandise was not ordinarily or chiefly used as linings. It will be observed that the paragraph under which the assessment was made provides both for coat linings and for fabrics *similar* to coat linings, and the merchandise would seem to be included in one or the other of these enumerations.

The protests are overruled.

No. 26271.—Protests Overruled.—Protests 355691, etc., of A. Klipstein & Co., and protest 490526 of P. Pastene & Co. (Boston), protest 495576 of Central Vermont Railway Co. (Burlington), protests 471064–35565, etc., of P. V. Bright Brokerage Co. et al., protests 423621–32866, etc., of Trans-Continental Freight Co., and protest 512500–38199 of Wedeles Bros. (Chicago), protest 492138 of Nippon Co. (Los Angeles), protest 496115 of P. Bauer & Co., protest 511239 of Bowring & Co., protests 495677, etc., of Theodore Hofacker, protest 443544 of Lekas & Drivas, protests 540227, etc., of W. A. Walker, and protest 418488 of John Wanamaker (New York), protest 486632 of Powers-Weightman-Rosengarten Co., and protests 409909, etc., of C. M. Taylor's Sons (Philadelphia), and protests 482782, etc., of Justinian Caire Co. (San Francisco). Opinions by Chamberlain, G. A.

Protests overruled for want of merit.

Before Board 2, August 9, 1911.

No. 26272.—Metal Coverings.—Protests 46169, etc., of Eastern Drug Co. et. al. (Boston).

The importers claimed that metal coverings, lacquered or printed by lithographic process, were hermetically sealed and excluded from the provision therefor under paragraph 195, tariff act of 1909.

Fischer, *General Appraiser:* * * * It appears clear from the proof offered that these cans are hermetically sealed as contemplated by the statute. G. A. 7144 (T. D. 31163). The closure is effected by a temporary metal cap soldered to the top,

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and when this is cut open a screw cap or cover, with which the tins are supplied, is arranged to take its place. Note ruling in Abstract 24750 (T. D. 31272).

In the case of the Eastern Drug Co., protest 461691, and Pitt & Scott (Ltd.), protest 469020, the decision of the collector assessing duty on the metal coverings is reversed in each case. In the latter case it appears that liquidation was originally made on August 24, 1910, and protest 461693 was filed September 12, or more than 15 days thereafter, and must be overruled as not having been filed in time. The collector having reliquidated the entry, however, and the importers having within 15 days after the said reliquidation filed a new protest, this latter one (protest 469020) is valid and in time, notwithstanding the protest against the original liquidation was invalid. Sgobel *v.* Robertson (126 Fed. Rep., 577; T. D. 25048). The protests are sustained as indicated, and reliquidation directed accordingly.

No. 26273.—Supercalendered and Embossed Grease-Proof Paper.—Protest 512703 of A. Gips (New York). Opinion by Fischer, G. A.

Protest sustained as to supercalendered and embossed grease-proof paper. G. A. 7136 (T. D. 31133) followed.

No. 26274.—Rough-Trimmed Mica.—Protests 492063, etc., of A. O. Schoonmaker (New York). Opinion by Fischer, G. A.

Protests sustained as to rough-trimmed mica on the authority of United States *v.* Myers (T. D. 31301).

No. 26275.—Protests Overruled.—Protests 354203-28698, etc., of Wakem & McLaughlin (Chicago), protests 407020, etc., of M. E. Day & Co. (Milwaukee), and protests 418189, etc., of Berlin Aniline Works, and protests 488013, etc., of Gallagher & Ascher (New York). Opinions by Fischer, G. A.

Protests overruled for want of merit.

Before Board 3, August 9, 1911.

No. 26276.—Thyme—Savory—Crude Drugs.—Protests 467056, etc., of Reiss & Brady (New York). Opinion by Waite, G. A.

Thyme and savory, classified as spices not specially provided for, under paragraph 298, tariff act of 1909, were held free of duty as crude drugs (par. 559), as claimed by the importers. Note abstract 23178 (T. D. 30585).

No. 26277.—Ground Desiccated Potatoes.—Protest 472813 of R. F. Downing & Co. (New York). Opinion by Waite, G. A.

Protests sustained as to ground desiccated potatoes. Abstract 23912 (T. D. 30901) followed.

No. 26278.—Potato Flour.—Protest 454092 of M. Furuya & Co. (Portland, Oreg.) Opinion by Waite, G. A.

Potato flour, classified as a prepared vegetable, under paragraph 252, tariff act of 1909, was claimed to be dutiable as a starch made from potatoes (par. 296). Protest sustained.

No. 26279.—Wah San.—Protests 411567, etc., of Fook Sang Tong & Co. et al. (San Francisco.)

A commodity known as wah san, classified as "vegetables, if cut, sliced, or otherwise reduced in size," under paragraph 252, tariff act of 1909, was claimed to be free of duty as a crude drug (par. 559), drug advanced in value or condition (par. 20), or as a medicinal preparation (par. 65). Protests overruled.

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WAITE, *General Appraiser:* * * * We gather from the evidence that this is the root of a plant or shrub which grows in China. The dirt is removed and also the bark of the root; in some instances it comes in its natural state otherwise, and in some cases it is sliced. * * * The testimony shows it is used to season soups, and is administered by Chinese doctors in strengthening preparation in cases of fever or a low condition of the system. The evidence reveals the fact that it is imported both by grocers and druggists. There is no evidence, however, which enlightens us as to what particular medicinal property it has or what element in it is medicinal in its curative properties. Any mild food substance might be used in the same way that it is claimed this is used in cases of fever or as a strengthening infusion or decoction. We do not think the evidence is sufficient to warrant us in classifying this substance as a drug. The board has passed upon this same commodity in several instances. One case went to the court, and the board was sustained in holding it to be a vegetable. Note Abstract 21139 (T. D. 29715), affirmed by the Circuit Court in Wing On Wo *v.* United States (175 Fed. Rep., 891; T. D. 30150). See also Abstract 23972 (T. D. 30934).

No. 26280.—PROTESTS OVERRULED.—Protest 463595 of Birkenwald Co. (Portland, Oreg.). Opinion by Waite, G. A.

Protest overruled for want of merit.

No. 26281.—COVERINGS.—Protests 312203, etc., of A. E. Louderback (New York). Opinion by Somerville, G. A.

Coverings containing liquids or semiliquids were held free of duty as the usual coverings. Austin *v.* United States (T. D. 31508) followed.

No. 26282.—TARE OF CHEESE.—Protests 465057, etc., of Lekas & Drivas et al. (New York). Opinion by Somerville, G. A.

The board held that duty should be assessed on the weight of cheese exclusive of the brine and therefore sustained the importers' claim for allowance. Note Abstract 23709 (T. D. 30768).

No. 26283.—PROTESTS OVERRULED.—Protests 364383, etc., of J. G. Cuccio et al. (Boston), protests 487763, etc., of W. A. Foster & Co. et al., protests 468057, etc., of Hartman, Goldsmith & Co. et al., protests 489526, etc., of Hills Bros. Co. et al., and protests 485448, etc., of O. A. Olsen & Co. (New York), protests 465758, etc., of N. C. Ives et al., and protests 401160, etc., of F. B. Vandegrift & Co. (Philadelphia), protests 441638, etc., of Wilfred Schade & Co. (St. Louis), and protests 503256, etc., of John H. Boden & Co. et al., and protests 486675, etc., of Shui Fai & Co. et al. (San Francisco). Opinions by Somerville, G. A.

Protests overruled for want of merit.

No. 26284.—GROUND FLINT—GROUND CORNWALL STONE.—Protests 499487, etc., of W. B. Daniels, and protest 499880 of Hammill & Gillespie (New York). Opinions by Hay, G. A.

Ground flint and ground Cornwall stone, classified as articles of earthy or mineral substances under paragraph 95, tariff act of 1909, were held dutiable as nonenumerated manufactured articles (par. 480), as claimed by the importers. G. A. 7235 (T. D. 31705) followed.

No. 26285.—POWDERED TALC.—Protests 497057, etc., of R. J. Waddell & Co. et al., and protests 402400, etc., of W. H. Whittaker et al. (New York). Opinions by Hay, G. A.

Protests sustained as to powdered talc. Salomon *v.* United States (T. D. 31635) followed.

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No. 26286.—Protests Overruled.—Protest 489776 of Braun Corporation (Los Angeles), protest 504064 of H. Renaud (Newark), protests 504623, etc., of Karl Hutter, and protests 470927, etc., of P. H. Petry & Co. et al. (New York), and protest 493773 of Perez Hermanos (San Juan). Opinions by Hay, G. A.

Protests overruled for want of merit.

Before Board 1, August 10, 1911.

No. 26287.—Pocketbook Frames—Coin Purses.—Protests 444268, etc., of Hensel, Bruckmann & Lorbacher (New York). Opinion by Sharretts, G. A.

Pocketbook frames of brass set with imitation precious stones and silver coin purses not composed in part of mesh, both intended for utilitarian purposes, were held dutiable as manufactures of metal under paragraph 199, tariff act of 1909, as claimed by the importers. G. A. 7179 (T. D. 31348) followed.

No. 26288.—Imitation Jet.—Protest 394313 of Newman Importing & Manufacturing Co. (Providence). Opinion by Sharretts, G. A.

Pieces of imitation jet, composed of glass or paste, classified as articles of ground glass under paragraph 98, tariff act of 1909, were claimed to be dutiable as manufactures of glass or paste (par. 109). Protest sustained. United States *v.* New York Merchandise Co. (167 Fed. Rep., 684; T. D. 29570) followed.

No. 26289.—Toy Necklaces.—Protest 448373 of B. Illfelder & Co. (New York). Opinion by Sharretts, G. A.

The board sustained the importers' claim that chains made of glass beads were dutiable as toys under paragraph 431, tariff act of 1909. G. A. 7251 (T. D. 31786) followed.

No. 26290.—Sapphires—Precious Stones, Cut.—Protests 432660, etc., of Wells, Fargo & Co. (New York). Opinion by Sharretts, G. A.

Small pieces of sapphire, cylindrical in shape, classified under paragraph 112, tariff act of 1909, relating to semiprecious stones, were held dutiable as "precious stones * * * cut but not set, and suitable for use in the manufacture of jewelry" (par. 449). Protests sustained. Note G. A. 7162 (T. D. 31270).

No. 26291.—Protests Abandoned.—Protests 252141, etc., of New York Millinery & Supply Co. et al. (New York). Opinion by Chamberlain, G. A.

Protests abandoned.

Before Board 2, August 10, 1911.

No. 26292.—Cylindrical Metal Containers.—Protests 466323, etc., of Welch, Holme & Clark Co. (New York). Opinion by Fischer, G. A.

Cylindrical metal containers classified as cylindrical or tubular vessels under paragraph 151, tariff act of 1909, were held free of duty as the usual containers of free merchandise, or dutiable at the rate applicable to their contents. United States *v.* Braun (T. D. 31596) followed. Note Abstract 26116 (T. D. 31757).

No. 26293.—Oiled and Cotton-Lined Paper.—Protest 483351 of R. F. Downing & Co. (Boston). Opinion by Fischer, G. A.

Protest sustained as to waterproof wrapping paper. Abstract 25520 (T. D. 31568) followed.

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No. 26294.—Scrap Iron and Steel.—Protests 418011-1575, etc., of Chicago Junk Co. (Port Townsend).

The merchandise consisted of steel rails, old bolts, scrap iron, etc., and was classified under paragraph 199, tariff act of 1909, as manufactures of metal. It was claimed to be dutiable as scrap iron or steel (par. 118) or waste (par. 479), or free of duty as junk (par. 600).

Fischer, *General Appraiser:* * * * The record in these cases is very unsatisfactory. It may be that the steel rails are unfit for further use, but it is not shown that they are entitled to classification either as waste or as junk. The record is sufficiently clear to show that as material they are fit for remanufacture by other methods than melting, and it appears that the rails are in fact subjected to heating and rerolling, which are not melting processes. We are not warranted on this record in disturbing the assessment so far as the old rails are in question. As to the bolts and scrap iron it would appear that that material is unsuitable for use for remanufacture without melting, and we sustain the claim in the protests as to that class of goods, holding the same dutiable as scrap at $1 per ton under paragraph 118.

No. 26295.—Protests Overruled.—Protest 286957 of Cleveland Stamping & Tool Co. (Cleveland), protests 445527, etc., of Prime Western Spelter Co. (Kansas City), and protests 527243-3826, etc., of Illinois Central Railroad Co. (New Orleans). Opinions by Fischer, G. A.

Protests overruled for want of merit.

Before Board 3, August 10, 1911.

No. 26296.—Hyacinth Bulbs—Protests 396210, etc., of Schlegel & Fottler Co. et al. (Boston), protests 403753, etc., of F. B. Vandegrift & Co. et al. (New York), and protest 413130 of Jackson & Perkins Co. (Rochester). Opinions by Waite, G. A.

Protests sustained as to hyacinth bulbs on the authority of Breck *v.* United States (T. D. 31576).

No. 26297.—Wild-Celery Seed.—Protests 446958, etc., of National Aniline & Chemical Co. (New York). Opinion by Waite, G. A.

Protests sustained as to wild-celery seed. G. A. 7200 (T. D. 31476) followed.

No. 26298.—Ground Pease—Pea Flour.—Protest 475743 of Dunlop & Ward, and protests 484095, etc., of Larini & Co. (New York). Opinions by Waite, G. A.

Ground pease classified under paragraph 251, tariff act of 1909, as "pease * * * prepared or preserved," were claimed to be dutiable as an unenumerated manufactured article (par. 480). Protests sustained. Note G. A. 5534 (T. D. 24904) and Abstract 23912 (T. D. 30901).

No. 26299.—Marrons.—Protests 449041, etc., of Levaggi, Granucci & Co. et al. (San Francisco). Opinion by Waite, G. A.

Protests sustained as to marrons on the authority of Abstract 25207 (T. D. 31450).

No. 26300.—Protests Overruled.—Protests 182910, etc., of Lun Chong & Co. et al. (San Francisco). Opinion by Waite, G. A.

Protests overruled for want of merit.

No. 26301.—Shortage.—Protest 438138 of W. Schade & Co. (St. Louis). Opinion by Somerville, G. A.

The board sustained a claim for refund of duty on account of shortage of wine owing to theft.

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No. 26302.—Coverings.—Protests 353597, etc., of Consolidated Color & Chemical Co. (New York). Opinion by Somerville, G. A.

Protests sustained as to coverings containing liquids or semiliquids. Austin *v.* United States (T. D. 31508) followed.

No. 26303.—Protests Overruled.—Protests 437740, etc., of Moos & Co. et al., (New York), protests 488963, etc., of George S. Bush & Co. et al. (Portland, Oreg.), and protest 475195 of Crown Distilleries Co. (San Francisco). Opinions by Somerville, G. A.

Protests overruled for want of merit.

No. 26304.—Powdered Talc.—Protests 434708, etc., of American Express Co. et al. (Boston), protests 395664–31020, etc., of J. H. Furman et al. (Chicago), protests 502680, etc., of Seaboard Rice Milling Co. (Galveston), and protests 420830, etc., of W. White (Port Huron). Opinions by Hay, G. A.

Protests sustained as to powdered talc. Salomon *v.* United States (T. D. 31635) followed.

No. 26305.—Clerical Error.—Protest 435648 of B. Altman & Co. and protest 476757 of Larini & Co. (New York). Opinions by Hay, G. A.

The board sustained claims of the importers for relief on the ground of clerical error.

No. 26306.—Fire Brick.—Protests 437844, etc., of Wing & Evans (New York).

Hay, *General Appraiser:* The merchandise here in question, described on the invoices as "pieces of clays or earths wrought or manufactured not specially provided for (fire bricks)," was assessed for duty as articles or wares composed of earthy or mineral substances under paragraph 95 of the tariff act of 1909. The claim relied upon by the protestants is that under paragraph 84 the commodity is dutiable, either directly or by similitude, as fire brick at the appropriate rate according to the weight.

In the tariff act of 1897 fire brick weighing not more than 10 pounds each were provided for in paragraph 87, and in Wing *v.* United States (119 Fed. Rep., 479) the Circuit Court for the Southern District of New York held that fire brick weighing more than 10 pounds were dutiable under that paragraph by similitude. Paragraph 84 of the act of 1909 makes provision for fire brick weighing not more than 10 pounds, and also weighing more than 10 pounds.

The articles in question are used in the construction of coke ovens, and the testimony shows that they are made from natural clays, ground up, mixed together, forced into molds, and then dried and baked at a high temperature. The importers' chemist testified that they are practically the same as American fire bricks in the main constituents, though they contain less impurities, the component parts being silica and alumina. The articles in question fall squarely within the provision of paragraph 84 and should be so classified. The protests are sustained.

No. 26307.—Albumen.—Protest 471650 of M. L. Eckstein & Co. (New York).

A commodity invoiced as "albulactin" and classified as a nonenumerated manufactured article under paragraph 480, tariff act of 1909, was claimed to be free of duty as albumen (par. 486).

Hay, *General Appraiser:* * * * From the testimony it would appear that the commodity in question is made from skim milk, from which, through a chemical process, the lac albumen and casein are separated. The lac albumen thus obtained is the commodity here under consideration. From this testimony, and that of the

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chemists who testified in the case, there is no doubt left that the commodity in question is milk albumen, and, as such albumen not specially provided for, is free of duty under paragraph 486.

The protest is sustained.

No. 26308.—Coal-Tar Pitch.—Protest 457648 of Texas Co. (New York).

Hay, *General Appraiser:* The commodity in question is invoiced as "tar pitch" and the testimony shows that it is the product of the distillation of brown coal. It was assessed for duty by the collector as a nonenumerated manufactured article under paragraph 480 of the tariff act of 1909 and is claimed by the importers to be free of duty as "pitch of coal tar" under paragraph 536.

We think the testimony fairly establishes the importers' contention. Some effort is made to show that coal tar is understood to mean tar made from anthracite coal, but we think the testimony entirely insufficient to show any such commercial understanding.

The protest is sustained and the collector directed to reliquidate the entry accordingly.

No. 26309.—Coverings of Specific-Duty and Free Goods.—Protest 408703 of Gibson Art Co. (Cincinnati), protests 491151, etc., of F. B. Vandegrift & Co. et al. (Philadelphia), protest 472731 of Kaufmann Bros. (Pittsburgh), and protest 486704 of Shing Shun & Co. (San Francisco). Opinions by Hay, G. A.

Paper, cardboard, and pasteboard wrappers or containers of merchandise subject to specific duty or free of duty were held nondutiable, as claimed by the importers. United States *v.* Matagrin (T. D. 31406) followed.

No. 26310.—Ground Caen Stone.—Protest 499451 of L. Alavaine & Co. (New York). Opinion by Hay, G. A.

Ground Caen stone was held dutiable as a nonenumerated manufactured article under paragraph 480, tariff act of 1909, rather than as an article of earthy or mineral substances (par. 95), as assessed. G. A. 7235 (T. D. 31705) followed.

No. 26311.—Tallow—Oleo Stearin.—Protest 456857 of Pacific Tallow Co. (San Francisco).

Hay, *General Appraiser:* The commodity under consideration, invoiced as "oleo stearin," was assessed for duty as tallow under paragraph 290 of the tariff act of 1909, and is claimed to be entitled to free entry under paragraph 640 as oleo stearin. The importers' witness testified that it is made from beef fat gathered into tallow, wrapped into a cloth and pressed under a hydraulic press, the commodity expressed being oleo oil and that retained being stearin. In other words, the oleo stearin is the tallow minus the oil. It is used by tanners to rub into leather.

The protest is sustained and the collector directed to reliquidate the entry, granting free admission to the commodity in question under paragraph 640.

No. 26312.—Communion Sets—Regalia.—Protests 497542, etc., of William C. Carey et al. (Buffalo). Opinion by Hay, G. A.

Communion sets were held free of duty under paragraph 661, tariff act of 1909, relating to regalia imported for religious societies. Note Abstract 21422 (T. D. 29834).

No. 26313.—Handkerchief Boxes.—Protests 494707, etc., of E. A. Wolffe (New York). Opinion by Hay, G. A.

Boxes, in the shape of books, containing handkerchiefs, and classified as unusual coverings, were held to be usual coverings and dutiable at the same rate as their contents. Protests sustained.

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No. 26314.—PROTESTS OVERRULED.—Protest 453060 of William H. Masson (Baltimore), protest 502121 of J. R. Peebles Sons Co. (Cincinnati), protest 451736 of Popular Dry Goods Co. (El Paso), protests 496838, etc., of R. F. Downing & Co., protests 472835, etc., of U. H. Dudley & Co., and protests 447407, etc., of Mills & Duflot (New York), protest 488234 of Alexander Murphy & Co. (Philadelphia), protest 447105 of E. T. Holmes (St. Paul), and protest 497589 of Braun-Knecht Heimann Co. (San Francisco). Opinions by Hay, G. A.

Protests overruled for want of merit.

BEFORE BOARD 1, AUGUST 11, 1911.

No. 26315.—TOY NECKLACES.—Protest 447054 of Ignaz Strauss & Co. (New York), and protests 422585, etc., of Charles Hott (Pittsburgh). Opinion by Sharretts, G. A.

The board held that necklaces made of glass beads or shells were dutiable under paragraph 431, tariff act of 1909, as toys rather than articles composed of beads (par. 421). Protests sustained. G. A. 6658 (T. D. 28391), G. A. 6868 (T. D. 29558), and G. A. 7251 (T. D. 31786) followed.

No. 26316.—CIGARETTE CASES—SMOKERS' ARTICLES—COIN HOLDERS—NOTEBOOKS.—Protests 294311, etc., of Newman Importing & Manufacturing Co. (Providence). Opinion by Sharretts, G. A.

Protests sustained as to cigarette cases, coin holders, and notebooks composed in chief value of metal, on the authority of G. A. 7102 (T. D. 30942), G. A. 7103 (T. D. 30943), and G. A. 7129 (T. D. 31089).

No. 26317.—SALVATION ARMY BADGES.—Protest 504306 of Thomas & Pierson (New York).

SHARRETTS, *General Appraiser:* The articles in question are white metal badges severally having a pin and hook soldered to the back, by means of which the badge is fastened to the wearer's coat. These articles are suitably inscribed and are intended for the use of members of the Salvation Army. They are no more ornamental than the customary badges worn by policemen, firemen, or cab drivers. The purpose of use is to indicate the occupation of the wearer and not for personal adornment. This board has held that elaborate badges, artistic and ornamental in character, composed of precious metals, were commonly known as jewelry, and as such under the act of 1897 were dutiable at 60 per cent ad valorem. No such conditions exist in the present case. They are neither jewelry nor ornaments and we hold that they are not included in the provisions of paragraph 448. The protest claiming 45 per cent ad valorem duty on the merchandise under paragraph 199 of the tariff act of 1909 is sustained, the collector's decision being reversed.

No. 26318.—SHELL CAMEOS—PRECIOUS STONES, CUT.—Protests 353344, etc., of F. W. Gertzen et al. (New York). Opinion by Sharretts, G. A.

Protests sustained as to shell cameos and pieces of coral, garnet, onyx, cornelian, rock crystal, jasper, and other semiprecious stones, cut suitable for settings in jewelry. G. A. 6584 (T. D. 28131), G. A. 6932 (T. D. 29997), and G. A. 6936 (T. D. 30068) followed.

No. 26319.—GLASS DRAWER AND DOOR KNOBS.—Protests 253267, etc., of Semon, Bache & Co. (New York). Opinion by Sharretts, G. A.

Drawer and door knobs made of molded glass and classified as articles in chief value of glass under paragraph 100, tariff act of 1897, were claimed to be dutiable as manufactures of glass (par. 112). Protests sustained on the authority of United States *v.* Heil (178 Fed. Rep., 537; T. D. 30492).

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No. 26320.—Cigar Lighters—Pencil Holders.—Protests 418949, etc., of American Express Co. et al. (St. Louis). Opinion by Sharretts, G. A.

The board held that cigar lighters and pencil holders composed in chief value of base metal were dutiable as smokers' articles under paragraph 475, tariff act of 1909, and manufactures of metal (par. 199), respectively, rather than as articles of personal adornment (par. 448). Protests sustained. G. A. 7129 (T. D. 31089) followed.

No. 26321.—Imitation Jet Articles.—Protests 436065, etc., of J. W. Brandt & Co. et al. (New York). Opinion by Sharretts, G. A.

Protests sustained as to imitation jet articles on the authority of United States *v.* Beierle (T. D. 31506).

No. 26322.—Protests Overruled.—Protests 453327, etc., of B. Blumenthal & Co. et al., and protest 456397 of G. Collamore & Co. (New York), protest 341788 of B. F. Dewees, protests 302872, etc., of O. G. Hempstead & Son et al., protest 434744 of Strawbridge & Clothier, and protest 409902 of Wright, Tyndale & Van Roden (Philadelphia), and protest 422259 of Pittsburgh Dry Goods Co. (Pittsburgh). Opinions by Sharretts, G. A.

Protests overruled for want of merit.

No. 26323.—Kippered Herring.—Protest 400579 of William H. Masson (Baltimore), protests 451796, etc., of A. A. Rowe & Son (Boston), protests 440922, etc., of Austin, Nichols & Co. et al., and protest 548649 of Strohmeyer & Arpe Co. (New York), and protest 480599 of J. W. Hampton, jr., & Co. (Philadelphia). Opinions by Chamberlain, G. A.

Protests sustained as to kippered herring on the authority of United States *v.* Rosenstein (T. D. 31357).

No. 26324.—Fresh Salmon.—Protests 471552, etc., of G. H. P. Todd (Detroit).

Salmon classified under paragraph 270, tariff act of 1909, as "fish in packages, containing less than one-half barrel," was claimed to be dutiable as "salmon, fresh" (par. 273).

Chamberlain, *General Appraiser:* * * * We regard the claim of the protestant as well founded, the provision for "salmon, fresh," being more specific than that for "fish in packages, containing less than one-half barrel, and not specially provided for."

The protests are accordingly sustained.

No. 26325.—Dried Fish.—Protests 380245, etc., of Y. Kawahara et al. (San Francisco). Opinion by Chamberlain, G. A.

Protests sustained as to dried fish in 1-pound packages on the authority of United States *v.* Yamashita (T. D. 31435).

No. 26326.—Peru Balsam.—Protest 474473 of A. A. Stillwell Co. (New York). Opinion by Chamberlain, G. A.

A commodity invoiced as "Balsam Peru" and classified as a chemical mixture under paragraph 3, tariff act of 1909, was held free of duty as balsam (par. 559), as claimed by the importers. Note Abstract 19663 (T. D. 29267).

No. 26327.—Frozen Fish.—Protests 488659, etc., of W. White (Port Huron).

Frozen fish classified under paragraph 270, tariff act of 1909, as "fish in packages, containing less than one-half barrel, and not specially provided for" was claimed to be dutiable as "fish * * * frozen, * * * not specially provided for" (par. 273).

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CHAMBERLAIN, *General Appraiser:* * * * The protestant's claim is untenable, for it has been held in Loggie *v.* United States (137 Fed. Rep., 813; T. D. 26340) that the provision for "fish in packages, containing less than one-half barrel, and not specially provided for" is more specific than that for "fish * * * frozen, not specially provided for." The protests are accordingly overruled.

No. 26328.—PROTESTS OVERRULED.—Protests 496770–37054, etc., of R. B. Boak & Co. (Chicago), protest 495989 of Y. Fukui (Port Townsend), and protest 466373 of J. Benitez Cintes, protest 447872 of Plaza Provision Co., and protests 449750, etc., of F. Ruiz de Porras & Co. et al. (San Juan). Opinions by Chamberlain, G. A.

Protests overruled for want of merit.

BEFORE BOARD 3, AUGUST 11, 1911.

No. 26329.—HYACINTH BULBS—Protests 394610–31176, etc., of W. W. Barnard Co. et al. (Chicago), and protests 394830, etc., of John Dunn, jr., & Co. et al. (Philadelphia.) Opinions by Waite, G. A.

Protests sustained as to hyacinth bulbs on the authority of Breck *v.* United States (T. D. 31576).

No. 26330.—PROTESTS OVERRULED.—Protests 328044, etc., of M. B. Stelle et al. (New York.) Opinion by Waite, G. A.

Protests overruled for want of merit.

No. 26331.—COVERINGS.—Protest 260950, etc., of A. De Ronde & Co. (New York). Opinion by Somerville, G. A.

Coverings containing liquids or semiliquids were held free of duty on the ground that they were not the kind of coverings provided for in section 19, customs administrative act of 1890. Austin *v.* United States (T. D. 31508) followed.

No. 26332.—PROTESTS OVERRULED.—Protests 262897, etc., of R. A. Tucker et al. (New York), and protest 522344 of A. Alvarez y Hermano (San Juan). Opinions by Somerville, G. A.

Protests overruled for want of merit.

No. 26333.—COVERINGS OF SPECIFIC-DUTY AND FREE GOODS.—Protests 495148, etc., of Stone & Downer Co. et al. (Boston). Opinion by Hay, G. A.

Paper, cardboard, and pasteboard wrappers or containers of merchandise subject to specific duty or free of duty were held nondutiable, as claimed by the importers. United States *v.* Matagrin (T. D. 31406) followed.

No. 26334.—PROTESTS OVERRULED.—Protests 449701, etc., of Champion Ignition Co. et al. (Detroit). Opinion by Hay, G. A.

Protests overruled for want of merit.

BEFORE BOARD 3, AUGUST 12, 1911.

No. 26335.—PROTESTS OVERRULED.—Protests 411111, etc., of William H. Masson (Baltimore), protests 455695, etc., of William A. Callahan et al. (Boston), protests 388926–30738, etc., of Theodore Ascher Co. et al. (Chicago), protests 405366, etc., of Abraham & Straus et al. (New York), protests 401036, etc., of George Allen et al. (Philadelphia), and protests 448647, etc., of American Express Co. et al. (St. Louis). Opinions by Hay, G. A.

Protests overruled for want of merit.

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(T. D. 31814.)

Qualifying power of the Federal Union Surety Co. suspended.

[Circular No. 50.]

TREASURY DEPARTMENT, *August 11, 1911.*

To bond-approving officers of the United States and others concerned:

The qualifying power of the Federal Union Surety Co. of Indianapolis, Ind., granted under the provisions of the act of Congress approved August 13, 1894, as amended by the act approved March 23, 1910, to act as sole surety on recognizances, stipulations, bonds, or undertakings given to the United States, has this day been suspended until completion of the examination of the affairs of this company by the Treasury Department, and until otherwise advised.

No bonds in which the United States may be interested either directly or indirectly executed on and after this date by the Federal Union Surety Co. of Indianapolis, Ind., as surety should be accepted by bond-approving officers of the United States until notice to the contrary is received from the Treasury Department.

JAMES F. CURTIS, *Acting Secretary.*

(T. D. 31815.)

Additional list of customs notaries.

[Omitted from this edition.]

(T. D. 31816.)

Drawback—Notice of intent—Meats.

The regulations contained in T. D. 31695 with respect to the filing of notice of intent to export instead of preliminary entries apply to shipments of meats.

TREASURY DEPARTMENT, *August 15, 1911.*

SIR: I have to direct your attention to T. D. 31695 of June 16, 1911, containing the new regulations for the allowance of drawback on manufactured articles.

The revision of the regulations governing the allowance of drawback on meats cured with the use of imported salt is under consideration and will be published in a short time. The allowance of drawback on meats necessarily follows the practice with respect to the allowance of drawback on manufactured articles and, therefore, the regulations contained in T. D. 31695 with respect to the filing of notice of intent

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to export instead of preliminary entries apply to shipments of meats. The other articles of the new regulations would also apply where applicable.

Respectfully, JAMES F. CURTIS,
(85326.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *Port Huron, Mich.*

(T. D. 31817.)

Drawback on Persian pipe tobacco.

Drawback on Persian pipe tobacco manufactured by T. K. Malouf & Co. with the use of imported leaf tobacco.

TREASURY DEPARTMENT, *August 17, 1911.*

SIR: Drawback is hereby allowed under section 25 of the tariff act of August 5, 1909, and the drawback regulations promulgated thereunder (T. D. 31695 of June 16, 1911) on Persian pipe tobacco manufactured by T. K. Malouf & Co. with the use of imported leaf tobacco.

The quantity of imported tobacco which may be taken as the basis for the allowance of drawback may equal the quantity used as shown in the drawback entry, provided it shall not exceed the net weight of the exported smoking tobacco.

The manufacturer's sworn statement, dated June 6, 1911, is inclosed herewith for filing in your office.

Respectfully, JAMES F. CURTIS,
(86288.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 31818.)

Information relative to applications, examinations, and appointments.

[Circular No. 53.]

TREASURY DEPARTMENT, *August 16, 1911.*

To collectors of customs and others concerned:

The department is in receipt of a copy of revised Form 131 recently issued by the Civil Service Commission, a copy of which has been or will be furnished you by the secretary of the local civil-service board upon application, containing information concerning applications, examinations, and appointments.

Your particular attention is invited to pages 20 to 35, as to the procedure to be followed in filling vacancies in the field service, extensive changes having been made in such procedure.

FRANKLIN MACVEAGH, *Secretary.*

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(T. D. 31819.)

Drawback on japans and enamolins.

Drawback on Special Baking Japan, Tumbling Japan, Navy Japan, Cuban Japan, One Coat Tin Japan, and Blue Label or Outside Eggshell Enamolin, Blue Label or Outside Flat Enamolin, Blue Label or Outside Enamolin, Slow Drying Red Label Enamolin, Quick Drying Red Label Enamolin, and Flat Red Label Enamolin, manufactured by Emil Calman & Co., New York City, with the use of imported asphaltum, stearin pitch, and oxide of zinc.—T. D. 25079 of March 5, 1904, and T. D. 31599 of May 16, 1911, revoked.

TREASURY DEPARTMENT, *August 16, 1911.*

SIR: Drawback is hereby allowed under section 25 of the tariff act of August 5, 1909, and the regulations of the department (T. D. 31695 of June 16, 1911) on Special Baking Japan, Tumbling Japan, Navy Japan, Cuban Japan, One Coat Tin Japan, manufactured by Emil Calman & Co., of New York City, with the use of imported asphaltum and stearin pitch, and Blue Label or Outside Eggshell Enamolin, Blue Label or Outside Flat Enamolin, Blue Label or Outside Enamolin, Slow Drying Red Label Enamolin, Quick Drying Red Label Enamolin, and Flat Red Label Enamolin, manufactured by the same company with the use of imported oxide of zinc.

The quantities of imported materials which may be taken as the basis for the allowance of drawback may equal those used as stated in the drawback entry, provided they shall not exceed the following:

Special Baking Japan, imported stearin pitch equivalent to 24.2 per cent of the finished product.

Tumbling Japan, imported stearin pitch equivalent to 22.71 per cent of the finished product.

Navy Japan, imported stearin pitch and imported asphaltum equivalent in each case to 17.04 per cent of the weight of the finished product.

Cuban Japan, imported stearin pitch equivalent to 20.43 per cent and imported asphaltum equivalent to 20.12 per cent of the finished product.

One Coat Tin Japan, imported stearin pitch equivalent to 18.73 per cent and imported asphaltum equivalent to 20.58 per cent of the finished product.

Blue Label or Outside Eggshell Enamolin, imported oxide of zinc equivalent to 61.14 per cent of the export weight.

Blue Label or Outside Flat Enamolin, imported oxide of zinc, equivalent to 61.5 per cent of the weight of the finished product.

Blue Label or Outside Enamolin, imported oxide of zinc equivalent to 48.63 per cent of the weight of the finished product.

In the case of the Red Label enamolins, an allowance not to exceed the quantities shown in the sworn schedule dated April 10, 1911, now on file at your port.

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The manufacturer's sworn statements dated May 16, May 18, and June 29, 1911, and the accompanying schedules are inclosed herewith for filing in your office.

T. D. 25079 of March 5, 1904, and T. D. 31599 of May 16, 1911, are hereby revoked.

Respectfully, JAMES F. CURTIS,
(12806.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 31820.)

Drawback on saws.

Drawback on saws manufactured by E. C. Atkins & Co., of Indianapolis, Ind., with the use of imported steel plates.

TREASURY DEPARTMENT, *August 16, 1911.*

SIR: Drawback is hereby allowed under section 25 of the tariff act of August 5, 1909, and the regulations promulgated thereunder (T. D. 31695 of June 16, 1911) on saws manufactured by E. C. Atkins & Co., of Indianapolis, Ind., from imported steel plates.

The allowance shall be based upon the weight of the imported plates, as set forth in the entry, after official verification of exported weight, and shall not exceed the net weight of the exported saws, with an allowance for worthless waste not in excess of 12 per cent of such weight.

The manufacturer's sworn schedule, dated June 29, 1911, and sworn statement dated June 12, 1911, are inclosed herewith for filing in your office.

Respectfully, JAMES F. CURTIS,
(34825.) *Assistant Secretary.*
SURVEYOR OF CUSTOMS, *Indianapolis, Ind.*

(T. D. 31821.)

Drawback on fish nets and seines.

Drawback on fish nets and seines manufactured by the Fish Net & Twine Co., of East Haddam, Conn.

TREASURY DEPARTMENT, *August 17, 1911.*

SIR: Drawback is hereby allowed under section 25 of the tariff act of August 5, 1909, and the regulations promulgated thereunder (T. D. 31695 of June 16, 1911) on fish nets and seines manufactured by the Fish Net & Twine Co., of East Haddam, Conn., with the use of imported flax twine.

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The allowance of imported flax twine shall not exceed the net weight of the exported nets and seines, with the addition of 2 per cent of such weight to compensate for loss in manufacture.

The manufacturer's sworn statement, dated July 28, 1911, is inclosed herewith for filing in your office.

Respectfully, JAMES F. CURTIS,
(58012.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Boston, Mass.*

(T. D. 31822.)

Drawback on locomotives.

Drawback on locomotives manufactured by the Baldwin Locomotive Works, of Philadelphia, Pa., with the use of imported steel channel bars.

TREASURY DEPARTMENT, *August 17, 1911.*

SIR: Drawback is hereby allowed under section 25 of the tariff act of August 5, 1909, and the regulations promulgated thereunder (T. D. 31695 of June 16, 1911) on locomotives manufactured by the Baldwin Locomotive Works, of Philadelphia, Pa., with the use of imported steel channel bars.

A manufacturing record shall be kept showing the weight of the imported bars used, the weight thereof after having been cut and machined, the wastage, and the values of the waste and the imported material at the factory. A sworn abstract from this record shall be filed with each entry.

The allowance shall be based on the net weight of the finished bars, with an addition to compensate for worthless waste not to exceed that shown in the sworn abstract.

The manufacturer's sworn statement, dated July 1, 1911, is inclosed herewith for filing in your office.

Respectfully, JAMES F. CURTIS,
(20030.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Philadelphia, Pa.*

(T. D. 31823.)

Estimates for funds—Payment for services—Lading and unlading imports and exports at night and on Sundays and holidays.

[Circular No. 54.]

TREASURY DEPARTMENT, *August 17, 1911.*

To officers of the customs and others concerned:

Referring to the provisions of the act of February 13, 1911, "to provide for the lading or unlading of vessels at night, the preliminary

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entry of vessels, and for other purposes," in which provision is made for the issuance of special licenses to lade or unlade imported merchandise in bond at night, Sundays, and holidays, and for the collection from the master, owner, agent, or consignee of the compensation to be paid to the several customs officers and employees entitled thereto according to the rates fixed by the Secretary of the Treasury, you are advised that, under the decision of the Comptroller of the Treasury and the ruling of the department, funds for these services must be collected from the parties in interest and deposited to the credit of the Treasurer of the United States as a special fund on account of "Night services of customs officers and employees," under the act of February 13, 1911.

To obtain funds for the payment of these expenses, there must be forwarded immediately on the deposit of the funds a special estimate under the heading "Night services for lading and unlading vessels, special fund," the amount deemed to be necessary to pay for such services, showing, however, on the estimate that the money has been actually collected and deposited, and giving the number of the certificate of deposit.

Advances will be made on such estimates from the special funds so deposited, but no advance can be made from the appropriation "Collecting the revenue from customs," because that appropriation is not available for the payment of such expenses.

FRANKLIN MACVEAGH, *Secretary.*

(T. D. 31824.)

Silk noils.

Silk noils, whether combed or uncombed, dutiable under paragraph 396, tariff act 1909, at the rate of 35 cents per pound.

TREASURY DEPARTMENT, *August 18, 1911.*

SIR: Referring to your letter of May 25, 1911, and previous correspondence in regard to the classification of silk noils, I have to advise you that after a careful consideration of this matter the department is of the opinion that silk noils, whether the noils are combed or uncombed, are properly dutiable under paragraph 396 of the tariff act as silk partially manufactured at the rate of 35 cents per pound, and you are accordingly directed, 30 days from the date hereof, to assess duty upon such merchandise at this rate.

Respectfully, JAMES F. CURTIS,
(84034.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 31825.)

Tissue-paper fans.

Appeal directed from the decision of the Board of United States General Appraiser of August 2, 1911, Abstract 26241 (T. D. 31804), involving the classification of fans made of tissue paper.

TREASURY DEPARTMENT, *August 19, 1911.*

SIR: The department is in receipt of your letter of the 7th instant, inviting attention to the decision of the Board of United States General Appraisers of August 2, 1911, Abstract 26241 (T. D. 31804), wherein it was held that certain fans made of tissue paper, which were assessed with duty as manufactures of tissue paper under paragraph 410 of the tariff act of 1909, were properly dutiable as manufactures of paper not specially provided for under paragraph 420 of the said act.

In view of the importance of the issue, you are hereby requested to file, in the name of the Secretary of the Treasury, an application with the United States Court of Customs Appeals for a review of the said decision, in accordance with the provisions of subsection 29 of section 28 of the said tariff act of 1909.

Respectfully,
(90521.)

JAMES F. CURTIS,
Assistant Secretary.

Mr. WM. L. WEMPLE,
Assistant Attorney General, New York.

(T. D. 31826.)

Metal hoes.

Appeal directed from the decision of the Board of United States General Appraisers of July 6, 1911, G. A. 7243 (T. D. 31740), involving the classification of certain hoes made by the forging process and ground.

TREASURY DEPARTMENT, *August 19, 1911.*

SIR: The department is in receipt of your letter of the 26th ultimo, inviting attention to the decision of the Board of United States General Appraisers of July 6, 1911, G. A. 7243 (T. D. 31740), wherein it was held that certain hoes made by the forging process and then ground on a grindstone, which were assessed with duty at 45 per cent ad valorem as manufactures of metal under paragraph 199 of the tariff act of 1909, were properly dutiable at 30 per cent ad valorem as forgings under paragraph 123 of the said act.

In view of the importance of the issue, you are hereby requested to file, in the name of the Secretary of the Treasury, an application with

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the United States Court of Customs Appeals for a review of the said decision, in accordance with the provisions of subsection 29 of section 28 of said tariff act of 1909.

Respectfully, JAMES F. CURTIS,
(90157.) *Assistant Secretary.*

Mr. WM. L. WEMPLE,
Assistant Attorney General, New York.

(T. D. 31827.)

Drawback—Documents.

Certification of documents for drawback purposes.

TREASURY DEPARTMENT, *August 21, 1911.*

SIR: It is provided in the revised drawback regulations (T. D. 31695 of June 16, 1911). article 11, that the documents filed as evidence of the authority of the officer of the corporation signing as proprietor may be certified by the secretary of the corporation before a notary public or other officer having a seal.

The department perceives no objection to the certification of such documents by the secretary of the corporation before a notary public or other officer having a seal, in connection with the indorsement of bills of lading for drawback purposes, and you are therefore authorized to follow such practice in the future.

Respectfully, JAMES F. CURTIS,
(85236.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 31828.)

Drawback on women's shoes.

Drawback on women's shoes manufactured by A. E Little & Co., of Lynn, Mass., with the use of imported black, white, and tanned corkscrew cloth.

TREASURY DEPARTMENT, *August 21, 1911.*

SIR: Drawback is hereby allowed under section 25 of the tariff act of August 5, 1909, and the department's regulations promulgated thereunder (T. D. 31695 of June 16, 1911) on women's shoes manufactured by A. E. Little & Co., of Lynn, Mass., with the use of imported black, white, and tanned corkscrew cloth.

A manufacturing record shall be kept showing the kinds and quantities of imported cloth used in the manufacture of the exported shoes, giving the number of linear yards, the width, the square yardage, and the weight of each linear yard, together with the total number of pairs of shoes of the several sizes manufactured, the quantity of wastage, its value, and the value of the imported cloth.

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A sworn abstract from this record shall be filed with each entry.

The allowance shall not exceed 0.1191 of a square yard, or 1.28 ounces, of imported cloth for each pair of shoes exported, with an allowance for worthless waste not to exceed 39.5 per cent of such quantity.

The manufacturer's sworn statement dated June 29, 1911, is transmitted herewith for filing in your office.

Respectfully, JAMES F. CURTIS,
(3746.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *Boston, Mass.*

(T. D. 31829.)

Drawback on tin foil, etc.

Drawback on tin foil, tea lead, bottle caps, cap metal, soft metal for steam and other packing purposes, pure lead foil, sheet lead, electrotype foil, mounted composition tin foils on paper, printed and colored foils, compound tin foil and other similar articles manufactured by Lehmaier, Schwartz & Co., of New York City, with the use of imported lead, tin, and paper.—T. D. 23014 and T. D. 25543 and the unpublished decision of October 6, 1897, are hereby revoked.

TREASURY DEPARTMENT, *August 22, 1911.*

SIR: Drawback is hereby allowed under section 25 of the tariff act of August 5, 1909, and the department's regulations promulgated thereunder (T. D. 31695 of June 16, 1911) on tin foil, tea lead, bottle caps, cap metal, soft metal for steam and other packing purposes, pure lead foil, sheet lead, electrotype foil, mounted composition tin foils on paper, printed and colored foils, compound tin foil and other similar articles manufactured by Lehmaier, Schwartz & Co., of New York City, with the use of imported lead, tin, and paper.

A manufacturing record shall be kept showing the date of manufacture, the article manufactured, the kinds and quantities of imported materials used, the waste, and the values of the waste and imported material. A sworn abstract shall be filed with each drawback entry. The allowance may equal the quantities used as shown by the sworn abstract, with a proper allowance for worthless dross not to exceed 1 per cent.

Such samples shall be taken by the collector from time to time for analysis as may be deemed necessary.

The manufacturer's sworn statement dated June 19, 1911, is inclosed herewith for filing in your office.

T. D. 23014 and T. D. 25543 and the unpublished decision of October 6, 1897, are hereby revoked.

Respectfully, JAMES F. CURTIS,
(85326.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 31830—G. A. 7265.)

Ampoules of quinine—Ejusdem generis.

1. A solution of hydrochlorate of quinine in sealed glass tubes (ampoules), not being provided for by name under paragraph 65, tariff act of 1909, and not being *ejusdem generis* with any of the forms enumerated in the proviso to said paragraph, is not dutiable under paragraph 65, but is free of duty as a salt of cinchona bark under paragraph 658 of said act.

2. The proviso to paragraph 65 is limited in the scope of its application to articles of a medicinal character which conform in appearance or adaptability in use to capsules, pills, tablets, troches, or lozenges.

United States General Appraisers, New York, August 17, 1911.

In the matter of protest 437825 of F. B. Vandegrift & Co. against the assessment of duty by the collector of customs at the port of New York.

Before Board 1 (SHARRETTS, McCLELLAND, and CHAMBERLAIN, General Appraisers; McCLELLAND, G. A., absent).

CHAMBERLAIN, *General Appraiser:* The merchandise in question consists of ampoules or sealed glass tubes filled with a solution of hydrochlorate of quinine for hypodermic use. Duty was assessed at the rate of 25 per cent ad valorem in accordance with the proviso to paragraph 65, tariff act of 1909. It is claimed to be entitled to free entry under paragraph 658. The pertinent parts of the paragraphs under consideration read as follows:

65. Medicinal preparations * * * *Provided*, That * * * medicinal and similar substances, * * * imported in capsules, pills, tablets, lozenges, troches, or similar forms, and intended for medicinal purposes, shall be dutiable at not less than the rate imposed by this section on medicinal preparations.

658. Quinia, sulphate of, and all alkaloids or salts of cinchona bark.

We find from the evidence that the merchandise is a salt of cinchona bark. The question then to be determined is, whether this solution of hydrochlorate of quinine contained in sealed tubes (ampoules), which are the usual coverings for this class of merchandise, and which is administered hypodermically, properly falls within any of the classes of medicinal substances mentioned in the proviso to paragraph 65. A careful reading of the paragraph leads us to the conclusion that the article under consideration is not included within any of the forms enumerated in the proviso, nor is it *similar* thereto. All the forms mentioned in said proviso are so prepared that they can be administered in their entirety. Glass ampoules, however, do not conform in appearance or adaptibility in use to capsules, pills, tablets, troches, or lozenges.

We therefore find that hydrochlorate of quinine in sealed glass tubes (ampoules), not being provided for in paragraph 65 by name, and not being *ejusdem generis* with any of the forms enumerated in the proviso to said paragraph, does not fall within its terms, but is

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specifically provided for under paragraph 658 as a salt of cinchona bark, and that the ampoules containing the same are the usual and necessary coverings therefor. We accordingly hold it free, as claimed.

The protest is sustained and the decision of the collector reversed.

(T. D. 31831—G. A. 7266.)

Weight of garlic.

In assessing duty by weight upon garlic, consisting of the garlic bulb with the top or stalk attached, sometimes imported in the form of braided strands and sometimes loose, no allowance shall be made for the weight of the tops.

United States General Appraisers, New York, August 21, 1911.

In the matter of protest 410485, etc., of L. Vitelli & Son et al. against the assessment of duty by the collector of customs at the port of New York.

Before Board 3 (WAITE, SOMERVILLE, and HAY, General Appraisers).

WAITE, *General Appraiser:* These cases arise over the importation of garlic from the district of Naples, Italy. It was assessed for duty under paragraph 261, tariff act of 1909, which is the same as paragraph 249 of the law of 1897. The paragraph reads as follows:

261. Onions, forty cents per bushel of fifty-seven pounds; garlic, one cent per pound.

No question arises as to the paragraph under which this commodity should be assessed. It is claimed, however, that a certain allowance should be made for the weight of the tops of the garlic, which are included in the importations and weighed in ascertaining the number of pounds upon which duty should be assessed. Considerable testimony was produced by the importers, which tends to show that the tops constitute about 10 per cent of the full net weight as returned by the examiner. The importers, in making these tests, selected a certain number of hampers, one or two from each of the invoices involved in these cases and certain other invoices included in other shipments, and separating the tops from the bulbs and weighing the tops the result showed, as above stated, that about 10 per cent of the full net weight was top. This amount would, of course, depend upon how much of the top was cut off from the garlic bulb. It is claimed that the net weight of the garlic upon which duty should be assessed should be the weight returned by the examiner less the weight of the tops as found by the importers. It is claimed that these tops are of no use as garlic, but are left upon the bulbs for packing purposes and for convenience in handling the goods. There is no dispute but that the tops have been included in the importations, as in these cases, for a great number of years—under the law of 1897 and the present law, at least, thus under these two laws having always been con-

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sidered a part of the garlic. It does not seem to us that the tops can be considered strictly a tare. Having been during all this time treated as a part of the commodity itself, we think it is more in the nature of a waste. Tare may be allowed, according to the decision of the Court of Customs Appeals in Shallus *v.* United States (T. D. 31408), "only in such cases where its presence was uncommon to the condition of the merchandise as ordinarily dealt in in trade and commerce." This is practically the view taken also in the case of Earnshaw *v.* Cadwalader (145 U. S., 247).

According to the testimony and the samples produced in court, the commodity is imported braided in strands or strings by means of the tops. Sometimes, however, they are imported, it appears from the testimony, in bunches tied together by the tops, and perhaps in some instances imported loose, but always with the tops attached. Whether this is for the express and only purpose of packing and protection in shipment, or whether the condition of the garlic is such that it improves by allowing the top to remain on the bulb, does not appear. It might very reasonably, we think, be for the latter purpose. At all events, if there is no reason for allowing the tops to remain except for the convenience of handling, it is entirely within the discretion of the importers to remove them before importation, in which event, of course, duty would be assessed only upon the garlic bulb or bottom. If the weight of the top is to be deducted, there is no reason why the weight of the dead husk, and even the root, should not be allowed for, because they are equally worthless for any practical purpose for which garlic is used. We are therefore of the opinion that the deduction should not be made. The protests are overruled.

(T. D. 31832.)

Abstracts of decisions of the Board of General Appraisers.

Board 1—Sharretts, McClelland, and Chamberlain. *Board 2*—Fischer, Howell, and Cooper. *Board 3*—Waite, Somerville, and Hay.

BEFORE BOARD 1, AUGUST 14, 1911.

No. 26336.—APRON LEATHER.—Protests 417573, etc., of L. M. Bowes (Boston). Opinion by Sharretts, G. A.

Protests sustained as to apron leather on the authority of United States *v.* Richards (T. D. 31548).

No. 26337.—GLASS DISKS FOR GOGGLES.—Protests 352545, etc., of American Thermo-Ware Co. et al. (New York). Opinion by Sharretts, G. A.

Protests sustained as to glass disks for goggles on the authority of United States *v.* American Thermo-Ware Co. (T. D. 31571).

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No. 26338.—SAPPHIRES—PRECIOUS STONES, CUT.—Protests 454037, etc., of Wells, Fargo & Co. et al. (New York). Opinion by Sharretts, G. A.

Small pieces of sapphire, cylindrical in shape, classified under paragraph 112, tariff act of 1909, as articles composed in chief value of semiprecious stones, were claimed to be dutiable as "precious stones, cut but not set" (par. 449). Protests sustained. G. A. 7162 (T. D. 31270) followed.

No. 26339.—PROTESTS ABANDONED.—Protests 504197, etc., of W. B. Quaintance et al. (New York). Opinion by Sharretts, G. A.

Protests abandoned.

No. 26340.—KIPPERED HERRING.—Protest 499443 of F. B. Vandegrift & Co. (Philadelphia). Opinion by Chamberlain, G. A.

Protests sustained as to kippered herring on the authority of United States *v.* Rosenstein (T. D. 31357).

No. 26341.—COAL-TAR PREPARATION.—Protest 463590 of I. F. Orton (Galveston).

CHAMBERLAIN, *General Appraiser:* The merchandise under protest is described on the invoice as creosote oil. It was returned as a coal-tar preparation and duty assessed at 20 per cent ad valorem under paragraph 15 of the tariff act of 1909. It is claimed to be free of duty under paragraph 536 as creosote oil.

The record is very meager. The only witness appearing was the importer himself, who merely testified the purpose for which the importation was made, namely, to be used by the Galveston health department as a disinfectant. Upon such a record we do not feel warranted in reversing the collector's classification. The burden of proof is upon the protestant to prove by a preponderance of evidence the correctness of his claim. This he has not done. The decision of the collector will therefore stand as being presumptively correct. The protest is overruled.

No. 26342.—DRIED FISH.—Protests 323209, etc., of Asia Co. et al. (Los Angeles). Opinion by Chamberlain, G. A.

Protests sustained as to dried fish in 1-pound packages on the authority of United States *v.* Yamashita (T. D. 31435).

No. 26343.—DRIED CODFISH.—Protest 456520 of H. M. Gidden, and protest 502837 of Harvey & Outerbridge (New York). Opinions by Chamberlain, G. A.

Codfish in drums classified as fish in packages of less than one-half barrel under paragraph 270, tariff act of 1909, was held dutiable as "fish * * * dried" (par. 273). Protests sustained. Abstract 23837 (T. D. 30865) followed.

No. 26344.—INDIGO PASTE.—Protests 407127, etc., of A. Klipstein & Co. (New York).

CHAMBERLAIN, *General Appraiser:* The merchandise in question is reported by the appraiser to consist of a combination of chlorine with synthetic indigo, which was reported by the United States chemist at the port of New York as being an insoluble haloid compound of indigo. Duty was assessed at the rate of 30 per cent ad valorem under paragraph 15 of the tariff act of 1909 as a coal-tar color and it is claimed to be dutiable under paragraph 25 of said act at three-fourths cent per pound as indigo paste.

The testimony is undisputed and shows that the article is made by a new process and is a complete substitute for the natural indigo treated with sulphuric acid, which has always been admitted to duty under the provisions for indigo paste. The record further shows that since its introduction into commerce the merchandise has been

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uniformly known to the trade as "indigo in paste" or as "indigo paste." In the case of Matheson *v.* United States (90 Fed. Rep., 276) it was held that an article, even though unknown prior to the enactment of the tariff, was nevertheless entitled to admission as an alizarin black if in fact derived from alizarin and possessed of the characteristics of alizarin colors. See also Pickhardt *v.* Merritt (132 U. S., 252) and Newman *v.* Arthur (109 U. S., 132). It has also been held in numerous decisions that articles of merchandise which, through changes in manufacturing processes and the introduction of new discoveries, are artificial and are known in trade as substitutes for natural products, are entitled to the same classification as the natural product or the article which originally was known by a name which had a much narrower significance. G. A. 6263 (T. D. 26995). The article here under consideration is identical in material, quality, and use with the article previously known as "indigo past·" and differs from it only by the substitution of bromine for sulphuric acid. It is apparent also that Congress in enacting paragraph 25 did not intend to limit its scope to only one indigo extract or paste, as is evidenced by the use of the plural and not the singular form of both nouns.

We find as follows: That the article under consideration is a paste derived from artificial indigo by the use of bromine or chlorine; that since its introduction it has been bought and sold at wholesale in the markets of this country under the name of "indigo paste"; that it is entitled to such designation by reason of the identity of its characteristics with previously known forms of indigo paste. We hold it dutiable under paragraph 25 at three-fourths cent per pound.

The protests are sustained and the decision of the collector in each case is reversed.

No. 26345.—Protests Overruled.—Protest 497541 of William A. Bird (Buffalo), protest 437133 of Bartley Bros. & Hall, and protest 455525 of William A. Foster & Co. (New York), and protests 466728, etc., of Alexander Murphy & Co. (Philadelphia). Opinions by Chamberlain, G. A.

Protests overruled for want of merit.

Before Board 3, August 14, 1911.

No. 26346.—Artistic Antiquities—Furniture.—Protests 452520, etc., of Koopman & Co. (Boston). Opinion by Waite, G. A.

Chairs and a sofa classified as furniture in chief value of wood under paragraph 215, tariff act of 1909, were held free of duty as artistic antiquities more than 100 years old (par. 717). Protest 452520 sustained.

No. 26347.—Ground Desiccated Potatoes.—Protests 533413, etc., of Stein, Hirsh & Co. (New York). Opinion by Waite, G. A.

Protests sustained as to ground desiccated potatoes. Abstract 23912 (T. D. 30901) followed.

No. 26348.—Raspberry Cordial—Fruit Juice.—Protest 490932 of W. A. Ross & Bro. (New York).

Waite, *General Appraiser:* The commodity in this case is invoiced as "raspberry cordial." The report of the appraiser is to the effect that it is fruit juice boiled with sugar. It is claimed to be dutiable under paragraph 311, tariff act of 1909, which provides for "ginger ale, ginger beer, lemonade, soda water, and other similar beverages containing no alcohol," at various rates according to the quantity in th· bottles. It was assessed for duty as fruit juice under paragraph 310.

We are practically left to decide this case upon the sample which was introduced. On inspection of this sample we find it to be a sweetish sirup with a tart or sour taste. We gather from the record and the testimony that it is a substance from

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which a beverage is made; it can not be used as a beverage in the condition in which it is imported; it can only be used in a highly diluted state, with 3 or 4 parts of water to 1 of the sirup. Hence we conclude it is not a beverage as it is imported; certainly it is not similar to ginger ale, ginger beer, lemonade, or soda water. We therefore can not sustain the protest. The finding of the collector is, in our judgment, correct. The protest is overruled.

No. 26349.—Additional Duty—Value.—Protest 451393 of Pisani Bros. (New York).

Waite, *General Appraiser:* The question in this case is as to the amount upon which an additional duty for undervaluation shall be reckoned. Subsection 7 of section 28, tariff act of 1909, provides as follows:

> If the appraised value of any article of imported merchandise subject to an ad valorem duty or to a duty based upon or regulated in any manner by the value thereof shall exceed the value declared in the entry, there shall be levied, collected, and paid, in addition to the duties imposed by law on such merchandise, an additional duty of one per centum of the total appraised value thereof for each one per centum that such appraised value exceeds the value declared in the entry.

The merchandise was entered at a value of 900 pesetas, or $174 in United States currency. On reappraisement proceedings it was advanced by a general appraiser to a value of $193, which is an advance of about 10.9 per cent over the entered value of $174. Additional duty has been taken by the collector on the basis of an advance of 22 per cent, arrived at by taking as the entered value the amount of the invoice as reckoned in depreciated currency, $158. The importers entered the goods on the basis of the standard gold value of the peseta, or $174 for the amount of the invoice on that basis, and claimed that this entered amount should constitute the basis upon which additional duty should be reckoned. We think their claim is correct, and therefore sustain the protest.

No. 26350.—Preserved Cherries—Fruit Pulp.—Protests 464975, etc., of La Manna, Azema & Farnan (New York).

Waite, *General Appraiser:* The goods in question in protest 464975 here are invoiced as "cherries in water." They are in bottles containing about a quart or, according to the return of the examiner, about 2 pounds. The cherries are uniformly red, are packed in a liquid of the same color, which we are led from the testimony and the record to conclude is made up of water and the juice which has exuded from the cherries. The analyst reports that the liquid consists of water containing in solution 6 per cent of reducing sugar, 2 per cent extract other than sugar, 0.4 per cent of inorganic salts, and no alcohol. These substances, except the water, we conclude are provided from the juice of the cherry; how much water is furnished from the juice of the cherry we are unable to determine. The testimony in the case is very meager. We are not advised as to what has been done to the cherries in packing them or preparing them. They are, however, in a good state of preservation and appear to have been sterilized and sealed. The neck of the bottle is stopped with a cork which has been treated in some manner and held in place by a tin disk on the top with wires across and fastened to the neck of the bottle. It is the same commodity passed upon by the board in protest 441403, reported as Abstract 24961 (T. D. 31352). These cherries were assessed for duty under paragraph 274, tariff act of 1909, at 1 cent per pound and 35 per cent ad valorem. Various claims are made by the importers, which were stated at the hearing to be as follows: Under paragraph 480 at 20 per cent ad valorem as an unenumerated manufactured article; at 25 cents per bushel under the provision for cherries, green or ripe, in paragraph 274, or at 2 cents per pound under the same paragraph as edible fruits prepared in any manner. Other claims in the protest have not been pressed and do not require discussion. From an inspection of the

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goods and the record in this case, we think the cherries are dutiable under the provision in paragraph 274 for "fruits of all kinds preserved or packed in * * * their own juices, if containing no alcohol." We do not think the testimony in this case warrants us in disturbing our finding in the case above referred to, where the commodity was the same. These cherries are preserved in their own juices as much as any fruit could be, which, of course, is assisted by the treatment of the cherries and the sealing of them in the condition we find them. Under the law of 1897 and the decisions rendered while it was in force, these goods would probably have been assessed at 2 cents per pound as fruits prepared in any manner. We conclude, however, that the addition of the word "packed" in the new law broadens the scope of the paragraph. That, together with the absence of any direct proof as to the amount of water which has been added, we think, justifies us in finding the goods are packed in their own juices, and hence dutiable as assessed. The protest is therefore overruled.

Protests 464976–7 relate to fruit pulp cooked without sugar and packed in hermetically sealed tins. The assessment of this kind of merchandise as a preserved fruit under paragraph 274 is affirmed on authority of decision by the Court of Customs Appeals in Habicht *v.* United States (T. D. 30772). These protests are therefore also overruled.

No. 26351.—Quantity of Apples.—Protest 484286 of Charles Weber, jr. (New York).

Waite, *General Appraiser:* Question here arises over the importation of apples from Canada. They were assessed for duty under paragraph 274 at 25 cents per bushel. The question involved is as to the number of bushels. The apples were not weighed, which compels us to ascertain the number of bushels from the testimony and measurements given of the barrels in which the apples were contained. The gauger seems to have proceeded upon the theory that a bushel of apples contains the same number of cubic inches that a bushel of grain or any such commodity, to wit, 2,150.42 cubic inches. This method of measurement we do not think is correct for apples, because it is common knowledge that apples when sold by the bushel, if not weighed, are sold by heaping measure. Just how many more cubic inches than the standard bushel a bushel of apples would contain we are unable to determine. All seem to agree, however, that the standard barrel contains 3⅛ bushels. If these barrels were standard; that is, barrels which would measure 64 inches at the bilge, with staves 28½ inches long, and head measurement 17 to 18 inches, they would contain approximately 3⅛ bushels. Were these barrels of a standard capacity? It appears a very large portion of the consignment was passed at Niagara Falls or some border town where it was recognized that the barrels contained but 2¾ bushels. The testimony for the importer seems to be clear that the capacity of these barrels was less than the standard barrel; that, instead of being 28½ inches long, they were but 26¾ inches. While we are unable to say definitely, we think we can assume that this would account for the difference between 468¾ bushels as found by allowing 3⅛ bushels to the barrel, and the 412 bushels claimed in this case to be the proper quantity. We think in view of all the testimony that if there is a doubt it should be resolved in favor of the importer, the apples not having been weighed, the only accurate means, apparently, of determining just how many there were. We therefore sustain the protest and authorize that duty be assessed on the basis of 412 bushels.

No. 26352.—Rotten Fruit.—Protests 441897, etc., of McCormick, Hubbs & Co. (New York). Opinion by Somerville, G. A.

The board sustained a claim for allowance on account of decay in fruit imported under the act of 1897.

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No. 26353.—Old Jute Bags.—Protest 469359 of Z. L. White & Co. (Galveston). Opinion by Somerville, G. A.

Old second-hand bags classified as manufactures of vegetable fiber under paragraph 358, tariff act of 1909, were held dutiable as waste (par. 479) as claimed. Note United States *v.* Davies (160 Fed. Rep., 456; T. D. 28951).

No. 26354.—Tare.—Protest 502632 of Newman-Andrew Co. (New York). Opinion by Somerville. G. A.

The board sustained a claim for allowance on the ground that the collector had allowed an insufficient amount of tare.

No. 26355.—Linen Thread Waste.—Protest 461725 of Riverside Mills (Savannah). Opinion by Somerville, G. A.

Linen thread waste classified under paragraph 479, tariff act of 1909, as waste not specially provided for, was held free of duty as paper stock, crude (par. 644).

No. 26356.—Shortage of Vermuth in Bottles.—Protest 487286 of Park & Tilford (New York). Opinion by Somerville, G. A.

The board sustained a claim for allowance on account of shortage of vermuth in bottles. Abstract 25896 (T. D. 31708) followed.

No. 26357.—Protests Overruled.—Protests 469368, etc., of M. Gottesman & Son (Boston), protests 412669, etc., of G. Calabrese, and protests 409184, etc., of F. B. Vandegrift & Co. (New York), protests 473131, etc., of F. Eckerson & Co. et al. (Philadelphia), and protests 476899, etc., of J. H. Boden & Co. (San Francisco). Opinions by Somerville, G. A.

Protests overruled for want of merit.

No. 26358.—Coverings of Specific-Duty and Free Goods.—Protests 424725, etc., of E. P. Dutton & Co. et al. (New York). Opinion by Hay, G. A.

Paper, cardboard, and pasteboard wrappers or containers of merchandise subject to specific duty or free of duty were held nondutiable, as claimed by the importers. United States *v.* Matagrin (T. D. 31406) followed.

No. 26359.—Granito.—Protests 484701, etc., of C. D. Jackson & Co. et al. (New York), and protests 492997, etc., of American Mosaic Co. (Washington). Opinions by Hay, G. A.

Granito classified as an article of earthy or mineral substances under paragraph 95, tariff act of 1909, was held dutiable as a nonenumerated manufactured article (par. 480), as claimed by the importers. Rossman *v.* United States (T. D. 31321) followed.

No. 26360.—Personal Effects.—Protests 480121, etc., of M. L. Meacham et al. (Plattsburg).

Hay, *General Appraiser:* The collector assessed duty on a gold pin, woolen clothing, three pipes, and a silver spoon purchased in Canada by the protestants while there on an automobile trip. These articles are claimed to be included within the $100 exemption in paragraph 709 of the tariff act of 1909.

The claim as to the woolen clothing is sustained and the collector directed to reliquidate the entry accordingly. In all other respects the protests are overruled. See G. A. 6965 (T. D. 30270).

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No. 26361.—SAND.—Protest 471181 of F. B. Vandegrift & Co. (Philadelphia).

A commodity classified under paragraph 95, tariff act of 1909, as composed of earthy or mineral substances was held free of duty as sand (par. 683), as claimed by the importers.

HAY, *General Appraiser:* The claim relied upon by the importers at the hearing was that the commodity in question is free of duty under paragraph 683 as sand. The peculiar construction of this paragraph of the law, were it before us as an entirely new question, might lead us to the conclusion that it was not intended to embrace sand that was manufactured from stone, but only natural sand in its crude condition, or in some measure advanced therefrom. A paragraph of the previous law identical in wording has, however, long since been construed by this board to embrace sand manufactured from stone by some process of grinding (Dana's case, G. A. 5079, T. D. 23521), and, in reenacting the identical language, Congress must be held in the law of 1909 to have adopted paragraph 683 with the meaning given it in the decision above cited.

No. 26362.—MODELING CLAY.—Protest 492543 of Strohmeyer & Arpe Co. (New York): Opinion by Hay, G. A.

Modeling clay classified as an article composed of earthy or mineral substances under paragraph 95, tariff act of 1909, was held dutiable as a nonenumerated manufactured article (par. 480), as claimed by the importers. G. A. 6724 (T. D. 28797) and Bancel *v.* United States (176 Fed. Rep., 132; T. D. 30124) followed.

No. 26363.—PROTESTS OVERRULED.—Protest 464160 of Emery-Bird-Thayer Dry Goods Co. (Kansas City), and protest 488404 of F. Euler (New York). Opinions by Hay, G. A.

Protests overruled for want of merit.

BEFORE BOARD 1, AUGUST 16, 1911.

No. 26364.—IMITATION JET ARTICLES.—Protests 428545, etc., of Judkins & McCormick Co. et al. (New York). Opinion by Sharretts, G. A.

Protests sustained as to imitation jet articles on the authority of United States *v.* Beierle (T. D. 31506).

No. 26365.—ARTICLES OF UTILITY.—Protests 411859, etc., of Hensel, Bruckmann & Lorbacher et al. (New York). Opinion by Sharretts, G. A.

Mesh bags, coin boxes, cigar cutters, penknives, eyeglass frames and similar articles, classified as articles of personal adornment under paragraph 448, tariff act of 1909, were held dutiable as smokers' articles (par. 475), mountings for optical instruments (par. 108), or according to their component material of chief value. Protests sustained. G. A. 7129 (T. D. 31089) and T. D. 30785 followed.

No. 26366.—PROTESTS ABANDONED.—Protests 415174, etc., of C. Perceval et al. (New York). Opinion by Chamberlain, G. A.

Protests abandoned.

BEFORE BOARD 2, AUGUST 16, 1911.

No. 26367.—CYLINDRICAL METAL CONTAINERS.—Protests 411306, etc., of Arnold, Hoffman & Co. et al. (New York). Opinion by Fischer, G. A.

Sheet-iron drums containing various chemicals, classified as cylindrical or tubular vessels under paragraph 151, tariff act of 1909, were held free of duty as the usual containers of free merchandise or dutiable at the rate applicable to their contents. United States *v.* Braun (T. D. 31596) followed.

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No. 26368.—Protests Overruled.—Protests 497288, etc., of J. McD. Mackay et al., protests 194967, etc., of L. H. Mills et al., and protests 406637, etc., of Snow's United States Sample Express Co. et al. (New York). Opinions by Howell, G. A.

Protests overruled for want of merit.

Before Board 3, August 16, 1911.

No. 26369.—Shortage.—Protest 489463-36730 of Q. Nervoine (Chicago) and protest 476399 of A. B. Heine & Co. (New York). Opinions by Somerville, G. A.

The board sustained claims for refund of duty on account of shortage.

No. 26370.—Protests Overruled.—Protest 475158 of Robert B. Ways (Baltimore), protest 504793-37704 of American Shipping Co., and protest 469044-35854 of International Forwarding Co. (Chicago), protest 491090-3718 of G. L. Battle (New Orleans), protest 491246 of H. B. Claflin Co., protest 491851 of Di Giorgia Fruit Co., protests 487755, etc., of Federal Sugar Refining Co. et al., protests 324412, etc., of F. Gatto, et al., protests 479888, etc., of P. C. Kuyper & Co. et al., protests 494063, etc., of Maley, Thompson & Moffitt et al., protest 499266 of K. Marks & Co., and protests 490888, etc., of C. Pizzorno et al. (New York), protests 481284, etc., of O. G. Hempstead & Son et al. (Philadelphia), and protest 472744 of A. S. Darrow (San Francisco). Opinions by Somerville, G. A.

Protests overruled for want of merit.

No. 26371.—Earthenware Exhausters.—Protest 419328 of Didier-March Co. (New York). Opinion by Hay, G. A.

Exhausters made of earthenware and metal and classified as earthenware under paragraph 96, tariff act of 1897, were held dutiable as nonenumerated manufactured articles (sec. 6), as claimed by the importers. Fensterer *v.* United States (T. D. 31110) followed.

No. 26372.—Protests Overruled.—Protests 497624, etc., of Acker, Merrall & Condit Co. et al. (New York). Opinion by Hay, G. A.

Protests overruled for want of merit.

Before Board 1, August 17, 1911.

No. 26373.—Shell Cameos.—Protest 321829 of Cohn & Rosenberger (New York). Opinion by Sharretts, G. A.

Shell cameos, classified as manufactures of shell under paragraph 450, tariff act of 1897, were held dutiable as precious stones (par. 435). Protest sustained on the authority of G. A. 6936 (T. D. 30068).

No. 26374.—Toy Jewelry.—Protests 324629, etc., of Strauss Bros. & Co. et al. (New York). Opinion by Sharretts, G. A.

The articles in question consisted of (1) necklaces and chains composed of beads and valued at not more than 11 marks per gross, (2) bracelets and armlets composed of beads and valued at not more than 7 marks per gross, and (3) brooches or pins composed of base metal and paste and valued at not more than 7 marks per gross. They were classified either as jewelry or as beaded articles under paragraphs 434 and 408, tariff act of 1897, and paragraph 421, act of 1909, or as manufactures of metal or glass (par. 199 or 109, act of 1909), and held dutiable as toys (par. 418, act of 1897, and par. 431, act of 1909.) Protests sustained.

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No. 26375.—Cut-Paste Articles.—Protests 294080, etc., of Rosenthal-Sloan Millinery Co. et al. (St. Louis). Opinion by Sharretts, G. A.

Protests sustained as to cut-paste articles on the authority of G. A. 6995 (T. D. 30444).

No. 26376.—Articles of Utility—Coin Holders.—Protest 428715 of Newman Importing & Manufacturing Co. (Providence). Opinion by Sharretts, G. A.

Protest sustained as to coin holders. G. A. 7129 (T. D. 31089) followed.

No. 26377.—Chemical Glassware.—Protests 477045, etc., of Henry Heil Chemical Co. (St. Louis).

Sharretts, *General Appraiser:* The merchandise covered by these protests is:

1. Measuring pipettes, etched with lines and figures.
2. Cuevettes, or absorption cells.

The official sample shows the pipettes in question to be composed wholly of blown glass. They are finished articles used in chemical laboratories for the purpose of measuring and transferring small volumes of liquids. Duty was assessed on these articles at the rate of 60 per cent ad valorem under paragraph 98 of the tariff act of 1909, and are claimed by the importers to be dutiable at 45 per cent ad valorem under paragraph 109 of said act as manufactures of glass. This contention we do not regard as tenable. Blown-glass tubing, the raw material from which pipettes of this character are made, is, by the terms of paragraph 98 itself, dutiable at the rate of 60 per cent ad valorem under the present tariff act. Furthermore, the pipettes have been etched, which fact alone suffices to bring them within the provision of paragraph 98.

We find the articles embraced in class 1 to be composed wholly of blown glass that has been etched, and overrule protest 477046.

The absorption cells covered by protest 477045 are not composed of blown glass. These articles are small tanks designed to hold liquids, the subject of spectral and other analysis. They are made by luting or cementing plate glass sides to a molded glass body, and such grinding as they have undergone has been for the purpose of utility and not of ornamentation or decoration. We hold, therefore, that these articles do not fall within the purview of paragraph 98, and the surveyor's decision in assessing them with 60 per cent ad valorem duty under that paragraph is reversed, the protest claiming the cells to be dutiable at the rate of 45 per cent ad valorem under paragraph 109 being sustained.

No. 26378.—Protests Overruled.—Protests 58522b, etc., of Joseph Lazarus & Co. (Cincinnati), protest 491088 of Emery-Bird-Thayer Co. (Kansas City), protest 488654–3732 of Illinois Central Railroad Co. (New Orleans), protest 443339 of B. Illfelder & Co. (Newport News), protests 443331, etc., of German American Glass Co. et al. (Philadelphia), and protest 244990 of Wilfred Schade & Co. (St. Louis). Opinions by Sharretts, G. A.

Protests overruled for want of merit.

No. 26379.—Kippered Herring.—Protests 478835, etc., of Flint & Boynton et al. (Los Angeles), and protest 466093 of Rosenstein Bros. (New York). Opinions by Chamberlain, G. A.

Protests sustained as to kippered herring on the authority of United States *v.* Rosenstein (T. D. 31357).

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BEFORE BOARD 3, AUGUST 17, 1911.

No. 26380.—HYACINTH BULBS.—Protests 401077, etc., of W. K. Harris et al. (Philadelphia). Opinion by Waite, G. A.

Protests sustained as to hyacinth bulbs. Breck *v.* United States (T. D. 31576) followed.

No. 26381.—ARTISTIC ANTIQUITIES—FURNITURE—SPANISH BRAZIER.—Protest 482823 of American Express Co., and protest 483538 of M. Cowles (New York). Opinions by Waite, G. A.

A Spanish brazier and an importation of Windsor armchairs, classified as manufactures of wood and furniture of wood under paragraph 215, tariff act of 1909, were held free of duty as artistic antiquities more than 100 years old (par. 717), as claimed by the importers.

No. 26382.—VEGETABLE EXTRACT MARMITE—EXTRACT OF MEAT.—Protests 505585, etc., of Millenium Food Co. et al. (Boston).

WAITE, *General Appraiser:* The merchandise covered by these protests is invoiced as "vegetable extract marmite." It was assessed, by virtue of the similitude clause, under paragraph 287, tariff act of 1909, as "extract of meat" at 35 cents per pound. The importers claim it should be dutiable under paragraph 65 as a medicinal preparation or under paragraph 480 as an unenumerated manufactured or unmanufactured article. At the hearing the importers' attorney made the claim that this commodity was assessable under paragraph 480 as a manufactured article or under paragraph 252 as a prepared vegetable. We do not think the claims under paragraphs 65 and 252 receive any support either from the law or the facts. Besides, the claim that this is a prepared vegetable is not made in the protest. We have grave doubts as to whether the similitude clause could be applied under the facts of this case. The principal ground of similarity is the use. But without deciding this question, we think the importers have failed to substantiate their claim under paragraph 480. Their claim being specific that it is a manufactured article, it became necessary to show by the method and manner of production the process and operations which it has undergone to bring it to the completed article. The only light shed upon this point of the case is in the statement of the witness for the importers that it is produced by a secret process. In the face of the specific claim that it is a manufactured article we should not feel warranted in holding it to be an unenumerated unmanufactured article or one that was partially manufactured. We therefore do not think the importers have substantiated their claim by sufficient evidence upon which to base a finding. Without passing upon the correctness of the collector's classification, we overrule the protests.

No. 26383.—PROTESTS OVERRULED.—Protest 454126 of F. Bing & Co.'s Successors (New York), protest 477048 of Quaker Shade Roller Co. (Port Huron), and protests 367430, etc., of John H. Boden & Co. et al. (San Francisco). Opinions by Waite, G. A.

Protests overruled for want of merit.

No. 26384.—SHORTAGE OF STOUT.—Protests 486759, etc., of C. H. King (New York). Opinion by Somerville, G. A.

Protest sustained as to shortage of stout in bottles. G. A. 7072 (T. D. 30796) followed.

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No. 26385.—Clerical Error.—Protest 501506 of American Express Co. (Boston), protest 479272 of Leon Rheims Co., protest 492817 of John Zimmermann Co., and protest 497085 of Zucker & Josephy (New York), and protest 493575 of Alexander Murphy & Co. (Philadelphia). Opinions by Hay, G. A.

The board sustained claims for relief on the ground of clerical error.

No. 26386.—Household Effects.—Protest 451717 of H. Von Slochen (New York), and protest 483324 of C. H. Wyman & Co. (St. Louis). Opinions by Hay, G. A.

Laces, embroideries, and other articles shown to have been in use abroad by the importers for more than a year were held free of duty under paragraph 520, tariff act of 1909, as household effects.

No. 26387.—Modeling Clay—Plasticine.—Protest 485091 of The Embossing Co. (Albany).

Plasticine, a modeling clay, classified as an article composed of earthy or mineral substances under paragraph 95, tariff act of 1909, was held dutiable as an unenumerated manufactured article (par. 480), as claimed by the importers.

Hay, *General Appraiser:* * * * We have many times pointed out that paragraph 95 did not apply to merchandise of this character. In Bancel *v.* United States (176 Fed. Rep., 132; T. D. 30124) plastilina, or modeling clay, was held to be dutiable under section 6 of the tariff act of 1897, and the law of 1909 affords no reason for changing the classification existing under the law of 1897. * * *

No. 26388.—American Goods Returned—Compliance with Treasury Regulations—Pro Forma Invoice.—Protests 477260, etc., of J. G. Rettig et al. (New York).

The question involved was whether there had been a compliance with article 570, customs regulations of 1908, relating to American goods returned.

Hay, *General Appraiser:* * * * The boxes in question were entered upon a pro forma invoice and a bond given for the production of a consular invoice. This consular invoice was produced within the time specified in the bond, and the declaration of the foreign exporter provided for in article 570 was attached to the consular invoice when it was filed with the collector. This we think is a substantial compliance with article 570 of the regulations, and also of article 571, and, in fact, is the only possible compliance when merchandise is entered upon a pro forma invoice and before the arrival of the consular invoice. The protests are therefore sustained. * * *

No. 26389.—Straw Bottle Covers.—Protests 451425, etc., of William Lanahan & Son (Baltimore).

Hay, *General Appraiser:* Straw covers for bottles, which were assessed for duty under paragraph 463 of the tariff act of 1909, are claimed in these protests to be usual coverings and therefore free of duty, or dutiable at the same rate as their contents.

In Reisinger's case, G. A. 3836 (T. D. 17961), straw bottle covers similar to these were held to be usual coverings and dutiable at the same rate as the bottles. The appraiser's letter contains this statement: "In view of the fact that the majority of bottles imported at this and other ports are not contained in straw jackets, or covers, it would seem that such jackets have ceased to be usual coverings for bottles." To be dutiable under the provision for unusual coverings it must appear that the coverings are both unusual and designed for use otherwise than in the bona fide transportation of their contents.

The protests are sustained, and the collector is directed to reliquidate the entries accordingly.

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No. 26390.—MEAT TANKAGE—BONE TANKAGE—MANURE.—Protests 476003, etc., of J. P. Hawes (Boston).

HAY, *General Appraiser:* The commodity in question in these protests is what is known as and called "meat tankage" and "bone tankage." It was assessed for duty in one case as a manufacture of bone under paragraph 463, and in the others as a nonenumerated manufactured article under paragraph 480 of the tariff act of 1909, and is claimed to be free of duty as substances used only for manure under paragraph 581, or as bone dust or bone ash fit only for fertilizing purposes under paragraph 515. The testimony in our judgment does not bring the commodity in question within the purview of the latter paragraph.

Paragraph 581 was construed by us in Baker's case, G. A. 7257 (T. D. 31800), and the law as there stated is applicable to the case at bar. We think the testimony offered by the importer fairly shows that practically the only use of the exact commodity under consideration in this case is in the manufacture of fertilizer, and the Government offered no testimony to contradict this. It is true that upon cross-examination of the importer's witnesses it was brought out that this commodity was sometimes sold to a certain poultry-feed manufacturer, but it also appeared that this poultry-feed manufacturer was a manufacturer of fertilizer as well.

Under the testimony in this case we think the protests should be, and they therefore are, sustained, and the collector directed to reliquidate the entries, admitting the merchandise in question free of duty under paragraph 581.

No. 26391.—CHURCH REGALIA.—Protest 461724 of Joseph Luhr (Pittsburgh).

HAY, *General Appraiser:* It is claimed in this protest that the articles here in question, which were assessed for duty as manufactures of metal under paragraph 199 of the tariff act of 1909, are entitled to free admission as church regalia under paragraph 661. The priest who imported the articles testified that the first items on the invoice, sanctuary lamps, are used for divine service merely, and that they are located on both sides of the altar; that the centrepoids are parts of the lamps; the third item, one canon mantle, covers three tablets used on the altar; that the next item is a censer, borne in the hand of the priest during religious services, and that the next item (one benitier) is in the nature of an urn to hold holy water, and is also carried in the hand during services; that the burettes are wine and water cruets from which the priest takes the wine or water in the sacrifice of the mass.

From this testimony it appears that the censer, the benitier, and the pair of burettes are the only articles carried in the hand during the services of the church for which they were imported. As to these items, the protest is sustained; as to all others it is overruled. The surveyor is directed to reliquidate the entry accordingly.

No. 26392.—CONTAINERS OF SCIENTIFIC PREPARATIONS.—Protest 465893 of C. H. Wyman & Co. (St. Louis).

HAY, *General Appraiser:* The University of Kansas imported for scientific purposes a cylinder of liquid sulphurous acid. The surveyor allowed free entry to the acid but assessed duty on the iron cylinder containing the same, for the reason that paragraph 650 of the act of 1909 makes no mention of iron cylinders as nondutiable containers. The usual coverings of merchandise free of duty have been held to be entitled to free admission and the surveyor does not report the cylinder in question to be unusual, and from the record we conclude that it is not an unusual covering or designed for use otherwise than in the bona fide transportation of its contents.

The protest is sustained and the surveyor directed to reliquidate the entry accordingly.

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No. 26393.—PROTESTS OVERRULED.—Protests 454087, etc., of United Shoe Machinery Co. (Boston), protests 364835–28746, etc., of Petru-American Importing Co. et al. (Chicago), protest 503206 of Emma & Helen Dann and protest 501484 of Annie Kinsella (Cincinnati), protest 425247–3531 of C. Robert Churchill (New Orleans), protest 519819 of Wilfred Schade & Co. (Newport News), protest 472792 of C. A. Clark, protest 480671 of Louis Theriott de Greffin, protest 466384 of R. F. Downing & Co., protest 475833 of Max Huhner, protest 498320 of Nathan & Greer Co., and protest 470954 of A. H. Smith & Co. (New York), protest 481318 of John Holzinger, and protest 481261 of Ralph Pierson & Co. (St. Louis), and protest 496463 of Guanica Centrale (San Juan). Opinions by Hay, G. A.

Protests overruled for want of merit.

No. 26394.—PROTESTS ABANDONED.—Protests 230551, etc., of Henry Clay & Bock & Co. et al. (Boston), protests 227138–23443, etc., of Havana American Co. (Chicago), and protests 221559–2832, etc., of Havana Tobacco Co. et al. (New Orleans).

Protests abandoned.

BEFORE BOARD 1, AUGUST 21, 1911.

No. 26395.—GUN-METAL BAGS—BEADED PURSES.—Protests 457619, etc., of Stern Bros. (New York). Opinion by Sharretts, G. A.

Handbags in chief value of gun metal and beaded purses in chief value of brass, which were classified as articles of personal adornment under paragraph 448, tariff act of 1909, were held dutiable as manufactures of metal (par. 199), as claimed by the importers.

No. 26396.—PROTESTS OVERRULED.—Protests 495106, etc., of R. F. Downing & Co. (Boston), protests 424166, etc., of Ashcroft Manufacturing Co. (Bridgeport), protests 275606–25472, etc., of Theodore Ascher Co. et al. (Chicago), protests 116752, etc., of D. Hirshberg et al., and protests 462999, etc., of Strauss Bros. & Co. et al. (New York), and protests 385628, etc., of Bausch-Lomb Optical Co. et al. (San Francisco). Opinions by Sharretts, G. A.

Protests overruled for want of merit.

BEFORE BOARD 3, AUGUST 21, 1911.

No. 26397.—RASPBERRY SIRUP—FRUIT JUICE—VINEGAR.—Protests 451623, etc., of Park & Tilford et al. (New York).

WAITE, *General Appraiser:* The commodity in this case is assessed under paragraph 310 as a fruit juice. It is claimed to be dutiable at 7½ cents per proof gallon as a vinegar under paragraph 299, or as a beverage under paragraph 311 at 18 cents per dozen bottles or 28 cents per dozen bottles, or 50 cents per gallon under the same paragraph. The further claim is made that the bottles containing said liquid are free of duty under paragraph 311. We have no proof as to the capacity of the bottles except the bottle in which the sample is presented. Assuming that to be the bottle in which the goods are imported, the claim for free entry should be sustained, we think, as to the bottles if the goods are assessable under paragraph 311. We do not think, however, that they are so assessable. The commodity is not suitable for a beverage; there is nothing to indicate it can be used in the condition in which it is imported as a beverage. It is a thick sirup, and can only be used in the making of a beverage by diluting it with water or some other liquid, hence it is not a beverage

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similar to ginger ale, ginger beer, lemonade, soda water, etc., as provided for in paragraph 311. The claim that it is dutiable under paragraph 311 is therefore overruled.

As to whether it is a vinegar, we are left to the testimony, which assumes to show a commercial designation to that effect—that is, to the effect that it is a raspberry vinegar. From an inspection of the sample, however, we are clear that it can not be used as a vinegar as vinegar is used and known and understood in the culinary world. It is too thick, and too much sweetening is contained in it in proportion to the amount of acidity. If it has been known and used as "raspberry vinegar," then "raspberry vinegar" is a different commodity from the vinegar known and mentioned in the statute in paragraph 299. We therefore hold it is not vinegar such as is covered by the statute, and overrule the protests.

No. 26398.—Hyacinth Bulbs.—Protests 415789, etc., of H. H. Berger & Co. et al. (New York). Opinion by Waite, G. A.

Protests sustained as to hyacinth bulbs on the authority of Breck *v.* United States (T. D. 31576).

No. 26399.—Straw Bottle Covers.—Protest 496311 of Von Bremen, Asche & Co. (New York). Opinion by Hay, G. A.

Straw bottle covers were held to be usual coverings and not subject to separate or additional duty. G. A. 3836 (T. D. 17961) followed.

No. 26400.—Cigar Lighters.—Protest 467696 of G. W. Sheldon & Co. (New York).

Hay, *General Appraiser:* This protest claims that so-called automatic lighters, assessed for duty as smokers' articles under paragraph 475 of the tariff act of 1909, are dutiable as manufactures of metal under paragraph 199.

The importation was for an automobile supply company, and there is testimony that the lighter in question is used to ignite acetylene lamps. In answer to the question, "Are these ever used as cigar lighters?" the witness said: "I don't think they can be used." When questioned more closely and asked whether they were used to light cigars or used in cigar stores, he answered that he did not know. They are described on the invoice as "cigar lighters." The articles are practically identical with those which were the subject of this board's decision in Steinreich's case, Abstract 13785 (T. D. 27785), where they were held to be correctly assessed as smokers' articles.

The protest is overruled.

No. 26401.—Protests Overruled.—Protest 490506 of F. H. Shallus (Baltimore), protest 467755 of Mrs. E. H. Sylvester (Burlington), protests 470497–35512, etc., of C. H. Knights-Thearle Co. et al. (Chicago), protests 402209, etc., of Charles N. Krohn & Co. et al. (Cincinnati), protest 517400 of W. Schade & Co. (Newport News), protests 259000, etc., of Hildreth & Segelken et al. and protest 425732 of P. C. Kuyper & Co. (New York), protest 483337 of E. Dillingham (Ogdensburg), protests 215814, etc., of J. Vetterlein & Co. et al. (Philadelphia), and protest 449747 of Pagan Lopez & Co. (San Juan). Opinions by Hay, G. A.

Protests overruled for want of merit.

No. 26402.—Protests Abandoned.—Protests 290551–26247, etc., of Quong Yuen & Co. et al. (Chicago), protests 275191, etc., of F. Vitelli & Son et al. (New York), protests 225529, etc., of M. J. Dalton Co. et al., and protests 288123, etc., of H. Kellogg & Sons et al. (Philadelphia), and protests 335741, etc., of Chong Lung & Co. et al. (San Francisco).

Protests abandoned.

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(T. D. 31833.)

Extension of privileges of immediate transportation to Brownsville, Tex.

TREASURY DEPARTMENT, *August 22, 1911.*

To collectors of customs and other officers concerned:

The appended act, providing for the extension of the privileges of the first section of the act approved June 10, 1880, governing the immediate transportation of dutiable merchandise without appraisement to Brownsville, Tex., is published for the information of customs officers and others interested.

JAMES F. CURTIS, *Assistant Secretary.*

[Public No. 23—H. R. 2925.]

AN ACT To extend the privileges of the act approved June tenth, eighteen hundred and eighty, to the port of Brownsville, Texas.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the privileges of the first section of the act approved June tenth, eighteen hundred and eighty, governing the transportation of dutiable merchandise without appraisement be, and the same are hereby, extended to the port of Brownsville, Texas.

Approved, August 17, 1911.

(T. D. 31834.)

Gum tragasol.

Appeal directed from the decision of the Board of United States General Appraisers of August 7, 1911, G. A. 7255 (T. D. 31798), involving the classification of gum tragasol.

TREASURY DEPARTMENT, *August 23, 1911.*

SIR: The department is in receipt of your letter of August 15, 1911, relative to the decision of the Board of United States General Appraisers of the 7th instant, G. A. 7255 (T. D. 31798), involving the classification of gum tragasol, which was assessed with duty under section 6 of the tariff act of 1897 and paragraph 480 of the act of 1909 as a nonenumerated manufactured article and was held by the board to be entitled to admission free of duty under paragraph 482 of the act of 1897 or 499 of the act of 1909.

In view of the importance of the issue, you are hereby requested to file, in the name of the Secretary of the Treasury, an application with the United States Court of Customs Appeals for a review of the said decision, in accordance with the provisions of subsection 29 of section 28 of the act of August 5, 1909.

Respectfully,
(90754.)

JAMES F. CURTIS,
Assistant Secretary.

Mr. WILLIAM L. WEMPLE,
Assistant Attorney General, New York.

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(T. D. 31835.)

Material used in the making of raincoats.

Appeal directed from the decision of the Board of United States General Appraisers of July 6, 1911, Abstract 26134 (T. D. 31757), denying a rehearing on the board's decision of June 16, 1911, Abstract 25910 (T. D. 31708), involving the classification of material used in the making of raincoats.

TREASURY DEPARTMENT, *August 23, 1911.*

SIR: I have to acknowledge the receipt of your letter of the 18th ultimo, inviting attention to the fact that on July 6, 1911, Abstract 26134 (T. D. 31757), the Board of United States General Appraisers denied the Government's application for a rehearing of its decision of June 16, 1911, Abstract 25910 (T. D. 31708), involving the classification of merchandise which the board described as material used in the making of raincoats composed of cotton, wool, and rubber, which was assessed with duty at the rate of 44 cents per pound and 55 per cent ad valorem under paragraph 378 of the tariff act, and which the board held was properly dutiable under paragraph 463 of the said act at the rate of 35 per cent ad valorem as a manufacture in chief value of india rubber.

As the issue is an important one, you are hereby requested to file, in the name of the Secretary of the Treasury, an application with the United States Court of Customs Appeals for a review of the said decision, in accordance with the provisions of subsection 29 of section 28 of the tariff act of August 5, 1909.

Respectfully, JAMES F. CURTIS,
(89711.) *Assistant Secretary.*

Mr. WILLIAM L. WEMPLE,
Assistant Attorney General, New York.

(T. D. 31836.)

Gold coin.

Gold coin may be accepted in payment of duty on passengers' baggage without being weighed to determine loss by abrasion.

TREASURY DEPARTMENT, *August 24, 1911.*

SIR: Referring to your letter of the 15th instant, reporting upon the complaint of a passenger that gold coin was refused in payment of duty on baggage when tendered on board a train arriving from Montreal, for the reason that there were no facilities for weighing the coin to ascertain if the loss in weight by abrasion exceeded that allowed by law, I have to inform you that the department is of the opinion that the provisions of article 1435 of the Customs Regulations of 1908

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should not be applied to gold coin when tendered in payment of duty on passengers' baggage, and you are hereby authorized to accept such coin without weighing.

Respectfully, JAMES F. CURTIS,
(90430.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Plattsburg, N. Y.*

(T. D. 31837.)

Conference of local appraisers, 1911.

TREASURY DEPARTMENT, *August 25, 1911.*

To collectors and other officers of the customs:

A conference of United States local appraisers will be held at the United States appraiser's office at New York, beginning November 6, and will be attended by the local appraisers at the following ports and subports:

Albany, Baltimore, Bangor, Boston, Bridgeport, Buffalo, Burlington (Vt.), Chicago, Cincinnati, Cleveland, Denver, Detroit, El Paso, Galveston, Great Falls, Hartford, Honolulu, Indianapolis, Kansas City, Key West, Los Angeles, Louisville, Milwaukee, Newark, New Orleans, Newport News, Newport (Vt.), New York, Niagara Falls, Nogales, Ogdensburg, Perth Amboy, Philadelphia, Plattsburg, Pittsburgh, Portland (Me.), Portland (Oreg.), Port Townsend, Providence, Richmond, Rochester, San Francisco, San Juan, Seattle, Springfield (Mass.), St. Louis, St. Paul, Tampa, Washington (D. C.).

During the said conference there will be held a subconference of such collectors and deputy collectors as may be in attendance at the appraisers' conference.

Such of the ports herein specified as have an appraiser will be represented by that officer. Each of the other ports designated in the foregoing list where there is only an acting appraiser will be represented by the officer who actually does the appraising or the principal part of it.

Appraising officers are invited to submit to the department not later than the 2d day of October such questions as they desire to have brought up for discussion in the conference. Questions may also be submitted for consideration at the subconference of collectors and deputy collectors.

The department will thereafter notify each officer who is to be present at the conference of the subjects to be taken up for discussion so that he will be able to come to the meeting prepared to discuss the problems intelligently and with a prior knowledge of such matters as are to be considered.

Samples will not be requested until after the department has decided upon the questions to be presented to the conference.

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The transportation and other expenses actually necessary of the officers attending the conference will be charged against the appropriation "Expenses of collecting the revenue from customs," except that in the case of the officers from San Juan they will be paid from the "Customs receipts, Porto Rico tariff fund."

JAMES F. CURTIS, *Assistant Secretary.*

(T. D. 31838.)

Celery seed.

Appeal directed from decision of the Board of United States General Appraisers of June 30, 1911, Abstract 26002 (T. D. 31727), involving the classification of celery seed.

TREASURY DEPARTMENT, *August 26, 1911.*

SIR: The department duly received a letter from your office, dated July 21, 1911, inviting attention to the decision of the Board of United States General Appraisers of June 30, 1911, Abstract 26002 (T. D. 31727), involving the classification of celery seed, which was assessed with duty at the rate of 10 cents per pound under paragraph 266 of the tariff act of 1909, and was held by the board to be entitled to admission free of duty under paragraph 559 of said act as a crude drug.

The board, in the decision under consideration, states that from a consideration of the testimony and the records in the case it is satisfied that the merchandise was wild celery seed of the character the subject of its decision G. A. 7200 (T. D. 31476). As it is the opinion of your office that the testimony was not sufficient to warrant the finding of fact that the seed was wild celery seed, I have to request that you file, in the name of the Secretary of the Treasury, an application with the United States Court of Customs Appeals for a review of the said decision, in accordance with the provisions of subsection 29 of section 28 of the tariff act of August 5, 1909.

Respectfully,
(70860.)

A. PIATT ANDREW,
Assistant Secretary.

MR. WILLIAM L. WEMPLE,
Assistant Attorney General, New York.

(T. D. 31839.)

Tamarinds.

Appeal directed from decision of the Board of United States General Appraisers of July 25, 1911, Abstract 26197 (T. D. 31788), involving the classification of tamarinds.

TREASURY DEPARTMENT, *August 26, 1911.*

SIR: The department is in receipt of your letter of the 21st instant inviting attention to the decision of the Board of United States General

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Appraisers of July 25 last, Abstract 26197 (T. D. 31788), wherein it was held that certain merchandise imported in casks and consisting of the pulp of tamarinds, the shells or pods having been removed in the process of preparation, and in some instances the seed also, and a small amount of molasses or sirup poured over the fruit, was properly entitled to admission free of duty as "tamarinds" under paragraph 688 of the tariff act.

In view of the importance of the issue, you are hereby requested to file, in the name of the Secretary of the Treasury, an application with the United States Court of Customs Appeals for a review of the said decision, in accordance with the provisions of subsection 29 of section 28 of the tariff act of August 5, 1909.

Respectfully, A. PIATT ANDREW,
(90826.) *Assistant Secretary.*

Mr. WILLIAM L. WEMPLE,
Assistant Attorney General, New York.

(T. D. 31840.)

Posting of daily list of appointments of all Treasury officials and employees who are required to give bond.

[Circular No. 55.]

TREASURY DEPARTMENT, *August 28, 1911.*

To bonding companies and others concerned:

A list of appointments of all Treasury officials and employees who are required to give bond to the United States will be posted daily, on and after September 1, 1911, in the Section of Surety Bonds of the Secretary's office of this department, for the information of bonding companies and their duly accredited representatives.

A. PIATT ANDREW, *Acting Secretary.*

(T. D. 31841.)

Pigskin saddles.

Saddles in chief value of pigskin dutiable under paragraph 461, tariff act of 1909, at the rate of 35 per cent ad valorem.

TREASURY DEPARTMENT, *August 28, 1911.*

SIR: I have to acknowledge the receipt of your letter of July 7, 1911, transmitting a communication from the appraiser at your port, in which he recommends that, in view of the decision of the United States Court of Customs Appeals (T. D. 31662), saddles in chief value

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of pigskin be assessed with duty under paragraph 461 of the tariff act at the rate of 35 per cent ad valorem, instead of under paragraph 450 of the said act at the rate of 20 per cent ad valorem, the rate which has heretofore been assessed thereon.

While the merchandise the subject of the decision of the Court of Customs Appeals in the case cited consisted of skivers, the court indicates very clearly that, in its opinion, the proviso to paragraph 450 covers only leather, boots and shoes, and harness, saddles, and saddlery manufactured from hides of cattle of the bovine species.

In view of this decision of the court, you are directed, 30 days from the date hereof, to assess duty upon saddles in chief value of pigskin at the rate of 35 per cent ad valorem, under paragraph 461 of the tariff act.

Respectfully,
(68048.)
COLLECTOR OF CUSTOMS, *New York.*

A. PIATT ANDREW,
Assistant Secretary.

(T. D. 31842.)

Abstracts of decisions of the Board of General Appraisers.

Board 1—Sharretts, McClelland, and Chamberlain. *Board 2*—Fischer, Howell, and Cooper. *Board 3*—Waite, Somerville, and Hay.

BEFORE BOARD 2, AUGUST 22, 1911.

No. 26403.—PROTESTS OVERRULED.—Protests 152783, etc., of Beerman & Frank et al. (New York). Opinion by Howell, G. A.

Protests overruled for want of merit.

BEFORE BOARD 3, AUGUST 22, 1911.

No. 26404.—DRIED PEASE.—Protest 494769 of A. J. Gianque (Detroit).

A car of dried pease, classified as "seed pease" under paragraph 262, tariff act of 1909, was claimed to be dutiable as "pease, dried, not specially provided for," under the same paragraph. Protest sustained.

WAITE, *General Appraiser:* * * * The testimony of the importer is to the effect that these pease were imported and sold for consumption as food, and were not sold for seed; that they were mixed stock, machine cleaned, and worth about half the price that hand-picked pease of selected varieties for seed purposes would be worth. We are of the opinion, therefore, that these should not be assessed as seed pease, but are properly dutiable at the lower rate of 25 cents per bushel under paragraph 262, as claimed. * * *

No. 26405.—ROTTEN FRUIT.—Protests 249106, etc., of Dominici Bros. et al. (New York). Opinion by Somerville, G. A.

Protests sustained as to rotten fruit imported under the tariff act of 1897. Denunzio Fruit Co. *v.* United States (164 Fed. Rep., 909; T. D. 29075) followed.

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No. 26406.—Protests Overruled.—Protest 462736 of Galban & Co., and protest 461823 of Hammill & Gillespie (New York), and protest 445174 of N. C. Ives (Philadelphia). Opinions by Somerville, G. A.

Protests overruled for want of merit.

No. 26407.—Bath Babies.—Protest 497984 of Butler Bros. (Minneapolis). Opinion by Hay, G. A.

Bath babies classified as china toys under paragraph 93, tariff act of 1909, were held dutiable as "dolls" (par. 431), as claimed by the importers. United States *v.* Butler (180 Fed. Rep., 1005; T. D. 30847) followed.

No. 26408.—Clerical Error.—Protest 492987 of T. Potter, Sons & Co. (Philadelphia). Opinion by Hay, G. A.

The board sustained a claim for relief on the ground of clerical error.

No. 26409.—Powdered Talc.—Protests 484605, etc., of Binney & Smith Co. (New York), and protest 485222 of Alexander Murphy & Co. (Philadelphia). Opinions by Hay, G. A.

Protests sustained as to powdered talc on the authority of Salomon *v.* United States (T. D. 31635).

No. 26410.—Protests Overruled.—Protests 246755, etc., of Charles B. Perkins & Co. et al. (Boston), protests 250080–24437, etc., of Crump Bros. et al., and protests 493671–36221, etc., of G. W Sheldon & Co. (Chicago), protest 449711 of A. J. Giaque (Detroit), protests 475735, etc., of J. Campbell & Co. et al., protests 379735, etc., of Knauth, Nachod & Kuhne et al., protests 408624, etc., of Raphael Tuck & Sons et al., and protests 458671, etc., of F. B. Vandegrift & Co. (New York), protest 476634 of O. G. Hempstead & Son (Philadelphia), protest 497514 of J. H. McNulty (Plattsburg), protest 504748 of W. C. Noon Bag Co. (Portland, Oreg.), and protests 451805, etc., of B. R. Anderson & Co. (Port Townsend). Opinions by Hay, G. A.

Protests overruled for want of merit.

No. 26411.—Protests Abandoned.—Protests 212453, etc., of Edward Arendt & Son et al., protests 337256, etc., of Hirzel, Feltman & Co. et al., protests 325264, etc., of Larini & Co. et al., and protests 261068, etc., of Zinkeisen & Co. et al. (New York).

Protests abandoned.

Before Board 1, August 24, 1911.

No. 26412.—Watch Glasses.—Protests 421580, etc., of Scientific Materials Co. (Pittsburgh).

Sharretts, *General Appraiser:* The merchandise covered by these protests is so-called watch glasses of different dimensions, ranging in diameter from 2 to 4 inches. These glasses are pieces of cylinder glass circular in form, and except as to being bent to form and having the edges ground, they have undergone no other process of manufacture. Duty was assessed upon the merchandise at the rate of 60 per cent ad valorem under paragraph 98 of the tariff act of 1909, the importers claiming it to be dutiable at 1⅝ cents per pound and 5 per cent ad valorem under the respective provisions of paragraphs 99 and 104 of said act. In G. A. 5812 (T. D. 25674) this board held that identical merchandise was dutiable at the same rates herein contended for under the appropriate paragraphs in the act of 1897, corresponding with paragraphs 99 and 104 of the present act.

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The United States Court of Customs Appeals (T. D. 31571) decided that glasses for auto goggles produced in precisely the same manner as the glasses here in question were dutiable at the same rate as claimed by the protestants in the present case. We accordingly sustain the protests, the surveyor's decision in each case being reversed. * * *

No. 26413.—ROSARIES.—Protest 402662 of Ralph Pierson & Co. (St. Louis). Opinion by Sharretts, G. A.

Rosaries classified as beaded articles under paragraph 421, tariff act of 1909, were held dutiable as manufactures of metal (par. 199). Protest sustained.

No. 26414.—LACE PINS.—Protests 499507, etc., of Dieckerhoff, Raffloer & Co. (New York).

Lace pins with steel shafts plated or washed with gold, and paste or glass heads of various colors, mounted on cards and sold by the gross cards, which were classified as jewelry under paragraph 448, tariff act of 1909, were claimed to be dutiable as manufactures of paste or glass (par. 109) or as manufactures of metal (par. 199).

SHARRETTS, *General Appraiser:* * * * The board has not deemed it necessary to inquire which of the two materials, glass or metal, composing the pins is the greater in value. In G. A. 6139 (T. D. 26679) this board held that lace pins similar to those here in question were not commonly or commercially known as jewelry. On the authority of that decision, affirmed by the United States Circuit Court of Appeals, Second Circuit, we sustain this protest to the extent indicated, the collector's decision being reversed. * * *

No. 26415.—PROTESTS OVERRULED.—Protests 320016, etc., of Albert Lorsch & Co., and protests 103248, etc., of Samuel Schiff & Co. (New York), and protests 494788, etc., of Taylor Instrument Co. (Rochester). Opinions by Sharretts, G. A.

Protests overruled for want of merit.

BEFORE BOARD 3, AUGUST 24, 1911.

No. 26416.—COUNTERVAILING DUTY ON SUGAR.—Protest 81796f of B. H. Howell, Son & Co. (New York).

Protest sustained as to countervailing duty on sugar on the authority of Franklin Sugar Refining Co. *v.* United States (142 Fed. Rep., 376; T. D. 27027).

No. 26417.—AMERICAN GOODS RETURNED—SCRAP IRON.—Protest 495220 of E. Goldberg (Port Townsend).

Scrap iron classified as such under paragraph 118, tariff act of 1909, was claimed to be free of duty as American manufactures returned (par. 500).

SOMERVILLE, *General Appraiser:* * * * The importer has complied with the regulations of the Secretary of the Treasury and submits his case upon the faith of that fact. In the case of Carleton Dry Goods Co., G. A. 6696 (T. D. 28633), it was held that where an importer complies with the regulations of the Secretary of the Treasury relative to establishing the identity of American manufactures of the kind described in paragraph 483, tariff act of 1897 (which is identical with paragraph 500 of the present tariff act), a *prima facie* case is made out for the free entry of the goods. It was further held that this presumption can be rebutted only by a report of the local appraiser affirmatively finding the articles to be of foreign manufacture, or by other satisfactory evidence to the same effect. The evidence in this case fails to show that the goods are of foreign manufacture. The protest is * * * sustained under said paragraph 500, the collector's decision being reversed.

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No. 26418.—Figs in Maraschino.—Protest 417932 of Reiss & Brady (New York). Opinion by Somerville, G. A.

Figs in Maraschino containing no added alcohol, which were classified as fruit in sugar under paragraph 263, tariff act of 1897, were held dutiable as "edible fruit, prepared" (par. 262), as claimed by the importers. United States *v.* Reiss (166 Fed. Rep., 746; T. D. 29507) followed.

No. 26419.—Protests Overruled.—Protest 495867 of G. Di Cola (Boston), protest 469082 of J. A. Wright (El Paso), protest 481277 of Hawley & Letzerich (Galveston), protests 491842, etc., of S. Cutietta & Co. (New York), protests 430609, etc., of Southern Pacific Co. (Nogales), and protest 501281 of Independent Coal & Ice Co. (Portland, Oreg.). Opinions by Somerville, G. A.

Protests overruled for want of merit.

No. 26420.—Coverings of Fuller's Earth.—Protests 413707, etc., of R. F. Downing & Co. (New York). Opinion by Hay, G. A.

Protests sustained as to coverings of fuller's earth on the authority of Abstract 25654 (T. D. 31624).

No. 26421.—Diamantine—Alumina.—Protests 476738, etc., of Hammel, Riglander & Co. (New York).

A commodity invoiced as "Diamantine" and classified as an article of earthy or mineral substances under paragraph 95, tariff act of 1909, was claimed to be dutiable as alumina (par. 4).

Hay, *General Appraiser:* * * * According to the report of the Government chemist this commodity falls squarely within the purview of paragraph 4. This paragraph, however, provides for alumina of (4) several degrees of fineness at (4) several specific rates of duty. As there is no evidence to show under which of these provisions of paragraph 4 the commodity in question should be classified, the protests are overruled.

No. 26422.—Earthenware Exhausters and Pumps.—Protests 489857, etc., of Didier-March Co. (New York). Opinion by Hay, G. A.

Exhausters and pumps classified as earthenware under paragraph 94, tariff act of 1909, were held dutiable as articles composed of earthy or mineral substances (par. 95), as claimed by the importers.

No. 26423.—Shortage.—Protests 495512, etc., of E. R. Squibb & Sons et al. (New York). Opinion by Hay, G. A.

The board sustained a claim for refund of duty on account of shortage.

No. 26424.—Granito—Sand.—Protests 420114, etc., of F. B. Vandegrift & Co. (Philadelphia). Opinion by Hay, G. A.

Protests sustained as to granito and so-called "steinsand" on the authority of Rossman *v.* United States (T. D. 31321) and Abstract 26361 (T. D. 31832).

No. 26425.—Coverings of Specific-Duty Goods.—Protest 435935 of Lockwood, Brackett & Co., and protests 465601, etc., of P. Pastene & Co. et al. (Boston). Opinions by Hay, G. A.

Protests sustained as to coverings of specific-duty goods. United States *v.* Matagrin (T. D. 31406) followed.

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No. 26426.—Bleached Hair.—Protest 482818 of Wells, Fargo & Co. (San Francisco).

An importation of yak hair reported by the appraiser to have been bleached, which was classified as an unenumerated manufactured article under paragraph 480, tariff act of 1909, was claimed to be free of duty as "hair of * * * cattle * * * cleaned" (par. 583). Protest sustained.

Hay, *General Appraiser:* * * * No evidence was offered by the Government in support of the classification, and we think the testimony fairly shows that the hair had not been subjected to any other process of manufacture than that of cleaning. Bleaching does not necessarily constitute a manufacture, and we think the clear and explicit provisions of paragraph 583 cover the merchandise in question. * * *

No. 26427.—Goddard's Plate Powder.—Protest 501256 of S. S. Pierce Co. (Boston).

Hay, *General Appraiser:* Goddard's plate powder, assessed for duty as an article composed of mineral substances under paragraph 95 of the tariff act of 1909, is claimed in this protest to be dutiable as a nonenumerated manufactured article under paragraph 480.

The chemist who testified in this case could not state positively the component material or materials of the article in question. The testimony is not, in our judgment, sufficiently definite to warrant us in affirmatively determining the correct classification of the commodity. The protest is therefore overruled without affirming the action of the collector.

No. 26428.—Clerical Error.—Protest 498792 of American Express Co. (Buffalo). Opinion by Hay, G. A.

The board sustained a claim for relief on the ground of clerical error.

No. 26429.—Protests Overruled.—Protest 505439–38145 of G. W. Sheldon & Co. (Chicago), protest 456175 of B. Altman & Co., protest 487902 of F. Bing & Co.'s Successors, and protest 436460 of F. B. Vandegrift & Co. (New York), protests 467266, etc., of C. F. Rumpp & Sons et al. (Philadelphia), protests 477038, etc., of F. W. Myers & Co. (Plattsburg), protest 488274 of Josef Gruber (Port Townsend), and protest 495230 of Justinian Caire Co., and protest 503277 of Swayne, Hoyt & Co. (San Francisco). Opinions by Hay, G. A.

Protests overruled for want of merit.

Before Board 1, August 26, 1911.

No. 26430.—Cut-Paste Articles.—Protests 187454, etc., of H. B. Claflin Co. et al. (New York). Opinion by Sharretts, G. A.

Protests sustained as to cut-paste articles on the authority of G. A. 6995 (T. D. 30444).

No. 26431.—Cinematograph Films.—Protest 365782 of C. H. Wyman & Co. (St. Louis). Opinion by Sharretts, G. A.

Protests sustained as to cinematograph films on the authority of United States *v.* Sussfeld (T. D. 31030).

No. 26432.—Cigarette Cases.—Protest 389731–30825 of Reiss Bros. & Co. (Chicago). Opinion by Sharretts, G. A.

Gun-metal cigarette cases classified as articles of personal adornment under paragraph 448, tariff act of 1909, were held dutiable as smokers' articles (par. 475), as claimed by the importers.

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No. 26433.—Imitation Jet Articles.—Protest 486598 of American Express Co. (Boston), protests 408029–31707, etc., of G. W. Sheldon & Co. (Chicago), and protests 445033, etc., of D. Lisner & Co. et al. (New York). Opinions by Sharretts, G. A.

Protests sustained as to imitation jet articles. United States *v.* Beierle (T. D. 31506) followed.

No. 26434.—Parts of Musical Instruments.—Protests 368932–29661, etc., of Lyon & Healy (Chicago). Opinion by Sharretts, G. A.

Pieces of wood shaped into the form of violin necks, and ivory mouth pieces for flutes and piccolos which are bored and cut into proper lengths, but need to have the mouth hole bored in them and to be polished, which were classified as parts of musical instruments under paragraph 453, tariff act of 1897, were held dutiable as manufactures of wood (par. 208) and manufactures of ivory (par. 450), as claimed by the importers. G. A. 7247 (T. D. 31755) followed.

No. 26435.—Protests Overruled.—Protests 310415, etc., of Moses Norris et al., and protests 268899, etc., of Arthur W. Robson et al. (Baltimore), protests 375881, etc., of W. N. Proctor Co. (Boston), protests 495873, etc., of Ashcroft Manufacturing Co. (Bridgeport), protests 321014–27794, etc., of Alfred H. Post & Co. et al., and protests 208800–21968, etc., of F. B. Vandegrift & Co. et al. (Chicago), protests 463498, etc., of Henry A. Wess et al. (Cincinnati), protests 387060, etc., of M. C. Lilley & Co. (Columbus), protests 271371, etc., of C. H. P. Todd (Detroit), protest 470526 of E. Klauber (Louisville), protests 269584–3093, etc., of F. B. Vandegrift & Co. et al. (New Orleans), protests 452708, etc., of American Thermo-Ware Co., protests 15500h, etc., of H. B. Claflin Co. et al., protests 341105, etc., of M. J. Corbett & Co. et al.; protests 267011, etc., of R. F. Lang et al., protests 451246, etc., of J. Friedenburg et al., protests 417260, etc., of Thomas Meadows & Co. et al., protests 473918, etc., of Mogi, Momonoi & Co. et al., and protest 403364 of Reiss & Brady (New York), protests 211257, etc., of O. G. Hempstead & Son et al., and protests 470561, etc., of Strawbridge & Clothier et al. (Philadelphia), protest 314941, of Shipley-Massingham & Co. (Pittsburgh), protests 402633, etc., of Leeder & Bernkopf (Providence), protests 248238, etc., of Taylor Bros. & Co. (Rochester), protests 219861, etc., of C. H. Wyman & Co. et al. (St. Louis), protests 355025, etc., of F. F. G. Harper & Co. et al. (San Francisco), and protest 496025 of Dulin & Martin (Washington). Opinions by Sharretts, G. A.

Protests overruled for want of merit.

Before Board 3, August 26, 1911.

No. 26436.—Protests Abandoned.—Protests 340808, etc., of McLellan & Brigham Co. et al. (Boston).

Protests abandoned.

Decisions on Applications for Rehearings.

No. 26437.—Rehearing Granted—Leather.—Application by the protestants for rehearing on protests 411275, etc. (Boston), of H. F. Livermore Co., decided July 6, 1911, Abstract 26015 (T. D. 31744). No. 315. Before Board 1, August 7, 1911.

Application granted. Merchandise classified as leather not specially provided for under paragraph 451, tariff act of 1909, is claimed to be dutiable as rough leather under the same paragraph.

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No. 26438.—Rehearing Granted—Biscuits.—Application by the protestants for rehearing on protest 469684 (New York) of A. M. Hirshfeld & Co., decided July 13, 1911, Abstract 26088 (T. D. 31757). No. 314. Before Board 3, August 10, 1911.

Application granted. Biscuits classified under paragraph 244, tariff act of 1909, as sweetened, are claimed to be dutiable under the same paragraph as biscuits not specially provided for.

No. 26439.—Rehearing Granted—Willow Baskets.—Application by the protestants for rehearing on protests 406816, etc. (Philadelphia) of H. Bayersdorfer & Co., decided July 14, 1911, Abstract 26096 (T. D. 31757). No. 316. Before Board 1, August 15, 1911.

Application granted. Baskets classified as manufactures of willow under paragraph 212, tariff act of 1909, are claimed to be dutiable as baskets of wood (par. 214).

No. 26440.—Rehearing Granted—Oil of Jasmine.—Application by the protestant for rehearing on protest 485057 (New York) of Donald Wilson, decided July 14, 1911, Abstract 26115 (T. D. 31757). No. 321. Before Board 1, August 15, 1911.

Application granted. Merchandise classified as a chemical compound under paragraph 3, tariff act of 1909, is claimed to be free of duty as oil of jasmine (par. 639).

No. 26441.—Rehearing Granted—Dutiable Value.—Application by the protestants for rehearing on protest 495997 (Seattle) of M. Seller & Co., decided July 25, 1911, Abstract 26207 (T. D. 31788). No. 322. Before Board 3, August 18, 1911.

Application granted. The importers claim that the collector assessed duty on the basis of an excessive value.

No. 26442.—Rehearing Denied.—Application by the protestants for rehearing on protest 497613 (San Francisco) of John Rothschild & Co., decided July 22, 1911, Abstract 26189 (T. D. 31774). No. 328. Before Board 3 August 21, 1911.

Application denied.

(T. D. 31843.)

Authorizing customs officers to make requisitions for blank master's certificate for sick or disabled seamen.

Treasury Department, *September 5, 1911.*

To officers of the customs:

It appears that some inconvenience and dissatisfaction has arisen by reason of the fact that customs officers at ports where an officer of the Public Health and Marine-Hospital Service is stationed are not furnished with a supply of blank master's certificate for sick and disabled seamen, in consequence of which masters, owners, or agents of American vessels calling at the customs office for such blanks are unable to obtain the same.

It is therefore hereby ordered that paragraph 10, page 7, of the Catalogue of Books and Blanks used by officers of the customs

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(edition of 1910) be amended to read as follows, the new part being indicated by italics:

10. Public Health and Marine-Hospital blank forms (1900 series) will be furnished to customs officers at ports only where there are no marine-hospital officers: *Provided, that this shall not apply to "Master's certificate for sick or disabled seamen" (Form 1915, Public Health and Marine-Hospital Service).*

It is desired that customs officers make requisition for and keep on hand a supply of this blank and furnish same upon request to masters, owners, or agents of registered, enrolled, or licensed American vessels.

R. O. BAILEY, *Acting Secretary.*

(T. D. 31844—G. A. 7267.)

Tops for hatpins.

Imitation sapphires, amethysts, and sardonyx, composed of glass or paste and intended for use as hatpin tops, *held* dutiable at 20 per cent ad valorem under paragraph 449, tariff act of 1909, as "imitation precious stones * * * for use in the manufacture of jewelry," rather than as manufactures of glass or paste under paragraph 109 of said act.

United States General Appraisers, New York, September 1, 1911.

In the matter of protest 488155 of P. C. Kuyper & Co. against the assessment of duty by the collector of customs at the port of New York.

Before Board 1 (SHARRETTS, MCCLELLAND, and CHAMBERLAIN, General Appraisers; MCCLELLAND, G. A., absent).

SHARRETTS, *General Appraiser:* The merchandise here in dispute consists of imitation sapphires, amethysts, and sardonyx, composed of glass or paste and intended for use as hatpin tops. Duty was assessed on the articles at the rate of 45 per cent ad valorem under paragraph 109 of the act of 1909, the importers claiming the same to be dutiable at 20 per cent ad valorem as imitations of precious stones under paragraph 449 of said act.

The articles are imitation precious stones and are in a form adapting them for no substantial use other than in the manufacture of jewelry and millinery ornaments. The better grade of imitation diamonds, rubies, opals, garnets, and, in fact, all imitations of precious stones that are used in the manufacture of jewelry, are likewise used in the manufacture of millinery ornaments, and when imported unset there is no means of determining to which use they will ultimately be put nor in which of the two classes of goods they will be chiefly used. In our opinion, if the articles are of a superior finish and belong to a class of imitation precious stones that are regarded by the trade as suitable for use in the manufacture of jewelry, it is immaterial whether or not they may be also used in the manufacture of millinery ornaments, although the latter may not be jewelry. Any other construction of

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the law deprives paragraph 449 of all administrative force with respect to imitation precious stones if it shall develop that the greater quantity of all such stones are used in the fabrication of millinery ornaments.

Imitation precious stones of larger size or inferior make, such as are used chiefly for ornamenting lamps, tables, windows, stoves, gas and electrical fixtures, etc., would be excluded from paragraph 449 for the reason that they are not suitable for jewelry purposes within the commercial understanding, although they might in exceptional cases be so used.

For many years articles of paste identical with those here in question have been classified for duty as imitation precious stones. We find that at and immediately prior to the passage of the act of 1909 the articles in the case at bar were so known, and find further that they are for use in the manufacture of jewelry. To the extent indicated the protest is sustained and the collector's decision reversed.

(T. D. 31845.)

Abstracts of decisions of the Board of General Appraisers.

Board 1.—Sharretts, McClelland, and Chamberlain. *Board 2.*—Fischer, Howell, and Cooper. *Board 3.*—Waite, Somerville, and Hay.

BEFORE BOARD 1, AUGUST 29, 1911.

No. 26443.—MILLINERY ORNAMENTS—WAX BEADS—CORAL.—Protests 202242, etc., of Cohn & Rosenberger (New York). Opinion by Sharretts, G. A.

The protests related to (1) millinery ornaments classified as jewelry under paragraph 434 or cut-glass articles under paragraph 100, tariff act of 1897, and held dutiable according to the component material of chief value; (2) wax beads, held dutiable as manufactures of wax (par. 448); and real coral strands, temporarily strung, held dutiable as precious stones (par. 435). Note G. A. 6584 (T. D. 28131).

No. 26444.—EXPOSED PHOTOGRAPHIC PLATES.—Protests 485624, etc., of American Express Co. et al. (Boston).

SHARRETTS, *General Appraiser:* These protests relate to photographic plates which, as shown by the testimony, have been exposed and developed.

The collector classified these articles as manufactures of glass and assessed duty thereon at 45 per cent ad valorem under paragraph 109 of the tariff act of 1909.

The importers claim that the merchandise is dutiable at 25 per cent ad valorem under the provision of paragraph 474 of said act for photographic dry plates. There are no exhibits in the case, but from the appraiser's report we have no difficulty in determining the precise character of the articles. The issue presented is, Have these articles, which originally were photographic dry plates, ceased to be such by virtue of additional treatment or manufacture? There is no evidence before us upon which to predicate a finding regarding this important point, and, under the rules of the board and the Court of Customs Appeals, the absence of such proof is fatal to the importers' claim, unless there has been an adjudicated case involving the same issue. The only recorded decisions by the Board of General Appraisers, G. A. 944 (T. D.

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12031), G. A. 4420 (T. D. 21055), and others of the same tenor, are all adverse to the importers' contention in the present case. Entirely independent of the failure of the protestant to establish his case by competent proof, we are convinced that there is no merit in his contention. It is a matter of knowledge that a photographic dry plate is a plate of glass especially prepared for photographers' use. It may remain a dry plate even after exposure and until it has been developed—that is, subjected to a chemical bath (there are several formulas for such bath) to modify and fix the objects portrayed on the plate. Having undergone this additional process, it ceases to be a dry plate and is known as a negative. It will be observed that paragraph 474 provides for "photographic dry plates or films." This term could not have been intended to include negatives or positives, for there is a further process for film negatives and photographic film positives.

In accordance with the view herein expressed, we overrule the protests and affirm the collector's decision in each case.

No. 26445.—Protests Overruled.—Protest 486073 of J. M. Colpas (Burlington) and protests 439890, etc., of H. B. Claflin Co. et al. (New York). Opinions by Sharretts, G. A.

Protests overruled for want of merit.

Before Board 3, August 29, 1911.

No. 26446.—Coverings.—Protests 264147, etc., of Austin, Nichols & Co. et al., protests 287543, etc., of Victor Koechl & Co., and protests 261013, etc., of H. A. Metz & Co. (New York). Opinions by Somerville, G. A.

Coverings containing liquids or semiliquids were held free of duty on the ground that they were not the kind of coverings provided for in section 19, customs administrative act of 1890. Austin *v.* United States (T. D. 31508) followed.

No. 26447.—Measurement of Grapes.—Protests 500048, etc., of Simons, Shuttleworth & French Co. et al. (New York). Opinion by Somerville, G. A.

Protests sustained as to the measurement of barrels containing grapes, on the authority of G. A. 7030 (T. D. 30664).

No. 26448.—Parts of Collar or Cuff Buttons.—Protests 488126, etc., of King Collar Button Co. et al. (New York). Opinion by Somerville, G. A.

Protests sustained as to incomplete collar or cuff buttons composed of metal. Abstract 26061 (T. D. 31757) followed.

No. 26449.—Steam Engines—Plows.—Protest 491708 of Alameda Sugar Co. (San Francisco).

Somerville, *General Appraiser:* The collector in his report to the board states that the protest specifically covers 2 steam engines and 2 coils of steel-wire rope only, but generally covers all the articles assessed for duty. This machinery is represented by the photograph marked Exhibit 2. The importers claim that the goods are free of duty under paragraph 476, which reads as follows:

476. Plows, tooth and disk harrows, harvesters, reapers, agricultural drills and planters, mowers, horserakes, cultivators, threshing machines, and cotton gins, fifteen per centum ad valorem: *Provided*, That any of the foregoing, when imported from any country, dependency, province, or colony which imposes no tax or duty on like articles imported from the United States, shall be imported free of duty.

It is claimed that all the articles taken together constitute an entirety. As stated by the collector, if it is an entirety the entire importation should have been assessed for duty at 45 per cent under paragraph 199, since it can be termed collectively steam farming machinery.

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The case seems to be settled by the board *In re* Lilienthal & Co., G. A. 5165 (T. D. 23818). On appeal being taken by the importers to the circuit court, suit 1534, it was there dismissed (T. D. 29106). Note also G. A. 5255 (T. D. 24153). The article is not enumerated, in our judgment, in said paragraph 476, nor is it an article *ejusdem generis* with anything there enumerated.

The protest is overruled and the decision of the collector affirmed.

No. 26450.—Coal—Culm.—Protest 489781 of Crescent Wharf & Warehouse Co. (Los Angeles).

Merchandise invoiced as "slack coal" and classified as bituminous coal under paragraph 428, tariff act of 1909, was claimed to be dutiable under the same paragraph as "coal slack or culm."

Somerville, *General Appraiser:* * * * The Government examiner of the merchandise was also the assistant weigher. He says he saw the coal imported, and that it was all mixed up, so that at the time of the importation there was no way of telling what part was slack and what part was lump coal except by segregation or separation. Said paragraph provides for coal slack or culm, such as would pass through a half-inch screen, at 15 cents per ton of 28 bushels, 80 pounds to the bushel.

Coal slack or culm is defined to be "coal slack or culm produced and screened in the ordinary way as such, and so shipped from the mines." It is manifest that the merchandise was properly assessed. Note United States *v.* Waterhouse & Co. (T. D. 31452). The protest is overruled.

No. 26451.—Gauge.—Protest 457739 of American Express Co. (Boston). Opinion by Somerville, G. A.

The board sustained a claim that Fernet Branca should be liquidated on the basis of 2.9 gallons per case and Ferro China on the basis of 2.71875 gallons per case.

No. 26452.—Importation—Repair Parts of Vessel.—Protest 488651 of Hawley & Letzerich (Galveston).

Somerville, *General Appraiser:* The importation consists of 3 packages of machinery valued at $500, which was assessed for duty at 45 per cent ad valorem under paragraph 199 of the tariff act of 1909. Assessment was made at Galveston, Tex. The importers claim that the goods are free of duty on the ground that they were never imported. They claim in their protest that these 3 packages were left at Vera Cruz for repairs to be forwarded to the steamship *Thurland Castle*, then lying at Port Arthur, Tex., waiting for the arrival of the 3 packages before she could proceed on her voyage. The packages arrived at Galveston, and were from there transported to Port Arthur.

It is well settled that an importation of merchandise is complete when the goods are brought within the limits of a port of entry with an intention of unlading them, and that it is not essential that they be unloaded to come within the jurisdiction of the customs officers for the assessment of duty. Meredith *v.* United States (13 Peters, 486, 494); Arnold *v.* United States (9 Cranch., 104); McDormand's case, G. A. 5355 (T. D. 24497). When the goods arrived at the port of Galveston they became liable for duty, and the fact that they were transshipped or exported to any other place would not relieve them from this liability. It has been held by the board that the arrival of goods at a port of entry would make them liable to duty even though they were destroyed before entry.

We overrule the protest and affirm the collector's decision.

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No. 26453.—Raspberry Sirup—Fruit Juice.—Protest 480118 of A. Steinfeld & Co. (Los Angeles). Opinion by Somerville, G. A.

A so-called raspberry sirup manufactured by Crosse & Blackwell, of London, classified under paragraph 303, tariff act of 1909, which provides for cordials and other spiritnous beverages, was claimed to be dutiable as a fruit juice (par. 310). Protest sustained.

No. 26454.—Agate Collar Buttons.—Protests 498029, etc., of C. H. Brandt (New York). Opinion by Somerville, G. A.

Protests sustained as to agate collar buttons on the authority of G. A. 7067 (T. D. 30877).

No. 26455.—Protests Overruled.—Protest 497091 of American Express Co., protest 489808 of F. H. Daniels, and protest 475168 of Patterson, Wylde & Co. (Boston), protest 464733 of Kahwaji & Saad (Kansas City), protest 512924 of International Sugar Feed Co. (Minneapolis), protests 492214, etc., of Dominici Bros. et al., protests 464402, etc., of Henry Gitterman & Co. et al., and protest 470138 of Thomas Meadows & Co. (New York), and protests 430611, etc., of Charles A. Krause Milling Co. (St. Paul). Opinions by Somerville, G. A.

Protests overruled for want of merit.

No. 26456.—Protests Abandoned.—Protests 231291, etc., of Theodore H. Diener & Co. et al. (Baltimore), protests 360265, etc., of F. W. Myers & Co. (Burlington), protests 381808–30232 of Sprague, Warner & Co. et al. (Chicago), protest 489814 of Chew Pack & Co. (Los Angeles), protest 500962–3765 of G. W. Rueff (New Orleans), protest 369457 of O. G. Hempstead & Son (Philadelphia), protests 371126, etc., of F. W. Meyers & Co. (Plattsburg), protest 489822 of G. S. Bush & Co. (Portland, Oreg.), protests 312534, etc., of George S. Bush & Co. et al. (Port Townsend), protest 466349 of Lanpher, Skinner & Co. (St. Paul), and protest 493003 of L. P. Seibold (Washington).

Protests abandoned.

Before Board 1, September 1, 1911.

No. 26457.—Rosaries.—Protests 282350, etc., of B. Muller-Thyme Co. (Kansas City), and protests 226707, etc., of M. H. Wiltzius Co. et al. (Milwaukee). Opinions by Sharretts, G. A.

Protests sustained as to rosaries on the authority of G. A. 7053 (T. D. 30731).

No. 26458.—Beaded Bags and Purses.—Protests 474527–36296, etc., of Marshall Field & Co. (Chicago). Opinion by Sharretts, G. A.

Beaded bags and purses classified under paragraph 448, tariff act of 1909, as articles of personal adornment, were held dutiable as beaded articles (par. 421). Protests sustained.

No. 26459.—Imitation Jet Articles.—Protests 421931, etc., of John Morrison et al., and protests 445071, etc., of Snow's United States Sample Express Co. et al. (New York). Opinions by Sharretts, G. A.

Protests sustained as to imitation jet articles on the authority of United States *v* Beierle (T. D. 31506).

No. 26460.—Electric-Light Fixtures in Part of Beads—Entireties.—Protests 261913–24809, etc., of Mandel Bros. (Chicago).

Sharretts, *General Appraiser:* The merchandise in question consists of imitation bronze figures about 2 feet high, to which are attached electric-light globes and

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glass shades for the same. The shades are ornamented with beads and duty was assessed upon the articles as entireties at 60 per cent ad valorem under the provisions of paragraph 408, act of 1897, for articles composed wholly or in part of beads. The value of the beads is an insignificant part of the cost of the entire articles, and it would be a constrained construction of the law to hold that Congress intended to include such articles among the enumeration in paragraph 408. We sustain the claim in the protest that the bronze figures are dutiable at 45 per cent ad valorem under paragraph 193 of the act of 1897.

The shades for the electric figures are separate articles of merchandise, and in the present case they are separately packed and itemized on the invoice. The collector's classification and the duty assessed on the appraised value thereof is affirmed.

No. 26461.—Cut-Paste Articles—Feather Articles.—Protest 232081-24100, etc., of G. W. Sheldon & Co. et al. (Chicago). Opinion by Sharretts, G. A.

Protests sustained as to cut-paste articles on the authority of G. A. 6995 (T. D. 30444) and as to aigrets composed in part of wire on the authority of United States *v.* Berlinger (167 Fed. Rep., 800; T. D. 29577).

No. 26462.—Millinery Ornaments—Precious Stones—Wax Beads.—Protests 251110, etc., of H. B. Claflin Co. et al., and protests 261229, etc., of A. & H. Veith (New York). Opinions by Sharretts, G. A.

Protests sustained as to millinery ornaments, precious stones, and wax beads on the authority of G. A. 6289 (T. D. 27112), G. A. 6380 (T. D. 27420), G. A. 6995 (T. D. 30444), G. A. 6639 (T. D. 28297), and G. A. 5624 (T. D. 25152).

No. 26463.—Precious Stones—Reconstructed Rubies and Emeralds.—Protests 192021, etc., of American Express Co. (New York). Opinion by Sharretts, G. A.

So-called reconstructed rubies and emeralds, classified as imitation precious stones under paragraph 435, tariff act of 1897, were held dutiable as precious stones under the same paragraph. Protests sustained on the authority of G. A. 6336 (T. D. 27278).

No. 26464.—Toy Necklaces, Bracelets, and Brooches.—Protests 380057, etc., of H. Buss & Co. et al. (New York). Opinion by Sharretts, G. A.

Protests sustained as to toy necklaces, bracelets, armlets, and brooches on the authority of G. A. 7251 (T. D. 31786).

No. 26465.—Toys—Printed Matter.—Protest 472400 of Davies, Turner & Co. (New York).

Sharretts, *General Appraiser:* The goods in question, as shown by the appraiser's report and the evidence consist of miniature paper toys of various kinds. Duty was assessed thereon at 35 per cent ad valorem under paragraph 431 of the tariff act of 1909.

There are several claims set forth in the protest, but the one relied upon is that the merchandise is dutiable at 25 per cent ad valorem under the provisions of paragraph 416 for printed matter. Counsel for the protestants referred to G. A. 7183 (T. D. 31377) to support their contention that the provision for printed matter is more specific than that for toys. In the case cited a majority of the board, in passing upon the dutiability of toy parasols, held that the provision in paragraph 478, act of 1909, for "parasols * * * covered with material other than paper" is more specific than that in paragraph 431 "for toys * * * not specially provided for." A long line of adjudicated cases, extending over many years, arising under the tariff acts of 1890, 1894, and 1897, pointing to a different conclusion, were cited by General Appraiser Somerville, who wrote a dissenting opinion in G. A. 7183, *supra.*

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The Court of Customs Appeals, in United States *v.* Borgfeldt (1 Cust. Ct. Appls., 370; T. D. 31455), laid down the rule that all articles commercially known as toys, except those composed of china, porcelain, parian, bisque, earthenware, stoneware, tinsel wire, lame, or lahn (specially provided for in paragraphs 93, 94, and 179 of the tariff), are dutiable under paragraph 431, for the reason that if they are toys they are not the articles provided for in other paragraphs of the act. We regard this principle controlling in the present case, and, on the authority of which, we overrule the protest, the collector's decision being affirmed.

No. 26466.—Chemical Glassware—Glass Tubing.—Protests 178350, etc., of Eimer & Amend (New York). Opinion by Sharretts, G. A.

Protests sustained as to chemical glassware and glass tubing on the authority of United States *v.* Heil (178 Fed. Rep., 537; T. D. 30492) and G. A. 6533 (T. D. 27884).

No. 26467.—Protests Overruled.—Protests 267657–25089, etc., of Burley & Tyrell Co. et al., protest 348505–28595 of Butler Bros., protests 384944–30228, etc., of Chicago Film Exchange, protests 232067–24089, etc., of A. C. McClurg & Co. et al., and protests 330804–27906, etc., of E. H. Sargent & Co. et al. (Chicago), protests 487103, etc., of Abraham & Straus et al., protests 231938, etc., and 293717, etc., of Bloomingdale Bros., protests 257393, etc., of A. C. Bosselman & Co. et al., protests 489034, etc., of Cauvigny Brush Co. et al., protests 247597, etc., of H. B. Claflin Co. et al., protests 300626, etc., of W. A. Crocker, protests 226840, etc., of Felix Hamburger et al., protests 231057, etc., of Hamburger & Co., protests 213863, etc., of D. S. Hesse & Bro., protests 393321, etc., of Julius Levy Co. et al., protest 355395 of Morimura Bros., protests 251798, etc., of P. H. Petry & Co. et al., and protests 8468h, etc., of Veit, Son & Co. et al. (New York), and protest 493705 of Leeder & Bernkopf Co. (Providence). Opinions by Sharretts, G. A.

Protests overruled for want of merit.

Before Board 3, September 1, 1911.

No. 26468.—Measurement of Almeria Grapes.—Protests 498434, etc., of N. C. Ives (Philadelphia). Opinion by Somerville, G. A.

Protests sustained as to the measurement of barrels containing Almeria grapes on the authority of G. A. 7030 (T. D. 30664).

(T. D. 31846.)

Appointment of deputy collector of customs at Vicksburg, Miss.

Treasury Department, *September 2, 1911.*

To collectors of customs and others concerned:

The appended copy of letter authorizing the appointment of a deputy collector of customs at Vicksburg, Miss., is published for your information and guidance.

R. O. Bailey, *Assistant Secretary.*

Treasury Department, *July 19, 1911.*

Sir: Under the provisions of the act of Congress entitled "An act to prescribe the duties of deputy collectors of customs," approved February 6, 1907, you are hereby

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appointed a deputy collector, Class A, excepted position, at Vicksburg, Miss., with compensation at the rate of $300 per annum, the appointment to take effect from date of oath.

You will accordingly enter into bond with the United States in the penal sum of $2,000, in accordance with the forms herewith inclosed and the rules regulating the execution thereof, and return the same to this office at your earliest convenience for examination, approval, and file.

You will report through the office of the collector of customs at New Orleans, La., in accordance with the provisions of the above-named act.

Respectfully,

FRANKLIN MACVEAGH, *Secretary.*

Mr. JOSEPH H. SHORT, *Vicksburg, Miss.*

(T. D. 31847.)

Insecticide act of 1910.

Articles 1017, 1018, 1019, 1020, 1021, 1022, 1028, 1029, and 1030 of the Customs Regulations of 1908 amended so as to apply to insecticides, Paris greens, lead arsenates, and fungicides, and the shipper's declaration provided for.

TREASURY DEPARTMENT, *September 8, 1911.*

To officers of the customs and others concerned:

At the request of the Secretary of Agriculture, reference being made to T. D. 31703, wherein articles 1015, 1016, and 1031 of the Customs Regulations of 1908 were made applicable to the insecticide act of 1910, articles 1017, 1018, 1019, 1020, 1021, 1022, 1028, 1029, and 1030 of the Customs Regulations of 1908 are hereby amended so as to apply to insecticides, Paris greens, lead arsenates, and fungicides in the same manner as they are now applicable to food and drug products.

All invoices of insecticides, Paris greens, lead arsenates, and fungicides imported into the United States shall be accompanied by a declaration of the shipper made before a United States consular officer, as follows:

I, ———— (Name in full.), the undersigned, do hereby declare that I am the ———— (Manufacturer or shipper.) of the merchandise herein mentioned, which consists of insecticides, Paris greens, lead arsenates, or fungicides. None of this merchandise is falsely labeled in any respect, nor dangerous to the health of the people of the United States, nor forbidden entry into, nor sale in, nor restricted in sale in, the country in which it is made or from which it is exported. The merchandise was manufactured in ———— (Country.), by ———— (Name of manufacturer.), and is exported from ———— (City.), consigned to ———— (City.).

———— (Signature.)

Done at ———, this —— day of ———, 191—.

In the case of importations of insecticides, Paris greens, lead arsenates, and fungicides to be entered at ports where food and drug

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inspection laboratories shall be established, this declaration shall be attached to the invoice on which entry is made. In other cases the declaration shall be attached to the copy of the invoice sent to the Bureau of Chemistry.

R. O. BAILEY, *Assistant Secretary.*

(T. D. 31848—G. A. 7268.)

Dress buttons.

1. Dress buttons composed of a composite metal known as "tombac," containing 86.47 per cent of copper and 13.1 per cent of zinc, are not composed of copper, but are composed of a variety of brass and are dutiable at 85 per cent ad valorem under paragraph 448, tariff act of 1909, as dress buttons.

2. Dress buttons composed in chief value of paste, imitating jet and gallilith, are dutiable at 50 per cent ad valorem as buttons not specially provided for, under paragraph 427, tariff act of 1909.

United States General Appraisers, New York, September 8, 1911.

In the matter of protests 459053, etc., of Rothschild Bros. & Co. against the assessment of duty by the collector of customs at the port of New York.

Before Board 1 (SHARRETTS, MCCLELLAND, and CHAMBERLAIN, General Appraisers).

SHARRETTS, *General Appraiser:* The goods in question consist of three descriptions of fancy dress buttons, designed to be worn on apparel for display, and valued at more than 20 cents per dozen pieces. Duty was assessed upon these buttons at the equivalent ad valorem rate of 85 per cent under paragraph 448 of the tariff act of 1909, the claim relied upon by the importers being that they are dutiable at the appropriate rate named in paragraph 427 of said act.

We find that the buttons indicated in the invoices as items 2103 and 9693 are composed in chief value of paste, imitating jet and gallilith, respectively. As to such buttons we sustain the claim in the protest that they are dutiable at 50 per cent ad valorem under paragraph 427 of said act.

Regarding the remaining buttons, if composed in chief value of brass, they are, under the decision of the United States Court of Customs Appeals (1 Ct. Cust. Appls., 542; T. D. 31549), dutiable as assessed. If, on the other hand, the composite metal of which the buttons are composed is not brass, they are dutiable at three-fourths of 1 cent per line per gross and 15 per cent ad valorem under paragraph 427, as claimed by the protestants.

The testimony of the importer is not material. When asked what was the component material of chief value in the buttons represented by Exhibits 1 and 3, he answered "copper." Later on he testified that the buttons were made of copper (the manufacturer having so informed him). Inasmuch, however, as it may be asserted without

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fear of contradiction that copper is the component material of chief value in almost all brass, and as the testimony shows that all of the buttons represented by Exhibits 1 and 3 are made of a composite metal consisting of copper and zinc, it is apparent that the importers' testimony must be disregarded.

Dr. Beans, consulting chemist to the Columbia University, the only other witness who appeared in behalf of the protestants, testified that he made an analysis of certain buttons of which those included in item 9763 alone were taken from the importation in question. These buttons he found were composed of copper 86.47 per cent and zinc 13.10 per cent. This witness when asked on cross-examination, "It [the material of which the button was composed] would be known as 'brass' among people?" answered, "It is known among the metallurgical profession as 'tombac.'" The inference derived from this answer is that the witness did not regard tombac as brass, and that his testimony relative to the minimum percentage of zinc in brass usually had reference to what he termed ordinary brass to the exclusion of tombac and other descriptions of brass containing a lower percentage of zinc. The witness further testified that the composition metal of which the buttons in question were made would not be commercially known as brass. Inasmuch, however, as the phrase "composed wholly or in chief value of brass" is used in a descriptive sense, it follows that whether a certain metal is or is not brass is a question of fact that can not be established by commercial testimony. Bearing directly upon this point, we refer to the following decision of the United States Circuit Court of Appeals, Second Circuit, where it was held that jet, which is an organic substance, does not include imitation jet composed of glass or paste, although commercially known as jet. Goldberg *et al.* *v.* United States (61 Fed. Rep., 90). So, too, india-rubber sponges, although commercially known as sponges, were held to be dutiable as manufactures of india rubber and not as sponges. Smith *v.* United States (149 Fed. Rep., 1022; T. D. 27746.) Aside from these decisions, Dr. Beans did not qualify as a commercial witness, and his testimony that the metal in question is not commercially known as brass is incompetent.

Turning to the popular or dictionary meaning of the word "brass," we find:

Ure's Dictionary of Arts, Manufactures, and Mines, page 470:

The chief properties of value in brass are its colour, hardness (which is superior to that of copper), and power of taking delicate impressions when cast in a mould.

Tombac (tombak), or red brass, contains from 82 to 97 per cent of copper.

Standard:

Brass. 1. An alloy of copper and zinc harder than copper. * * * Included among the named *varieties of brass* is "red-yellow brass" containing 90 per cent copper and 9.6 per cent zinc.

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Century:

Tombac. One of the many names of brass; Prince's metal, Mannheim gold. Similor and tombac are names indiscriminately applied to varieties of brass used for mock jewelry. Various analyses of alloy sold under the name of tombac show from 82 to 99 per cent of copper and corresponding amounts of zinc.

Dr. Beans testified that the metal in question contained 86 per cent of copper and 13 per cent of zinc, and that it was known *as tombac.* All of the authorities agree that tombac is a variety of brass (red brass), and they all agree that the same percentage of copper and zinc as that contained in the metal in question would not be unusual in the varieties of brass especially used in mock jewelry. The United States chemist, who is called upon almost daily to analyze and classify metal of different kinds, testified that the buttons represented by Exhibits 1 and 3 are composed of brass. We so find as a fact and overrule the protest relative thereto. The collector's decision is reversed only so far as it relates to the buttons enumerated as items 2103 and 9693. In all other respects it is affirmed.

Protest 461077, having been abandoned, is overruled.

(T. D. 31849—G. A. 7269.)

Articles wholly of celluloid.

Articles made wholly of celluloid are dutiable as finished or partly finished articles of which collodion or any compound of pyroxylin or of other cellulose esters is the component material of chief value at 65 cents per pound and 30 per cent ad valorem under paragraph 17 of the tariff act of 1909.—Cauvigny Brush Co. *v.* United States (1 Ct. Cust. Appls., 118; T. D. 31118) followed.

United States General Appraisers, New York, September 9, 1911.

In the matter of protest 398956 of F. B. Vandegrift & Co. against the assessment of duty by the collector of customs at the port of New York.

Before Board 1 (SHARRETTS, McCLELLAND, and CHAMBERLAIN, General Appraisers).

SHARRETTS, *General Appraiser:* The merchandise in question consists of dress protractors made wholly of pyroxylin. Duty was assessed on these articles at the rate of 65 cents per pound and 30 per cent ad valorem under paragraph 17 of the tariff act of 1909.

The contention of the importers is that inasmuch as paragraph 17 provides for articles composed in *chief value* of pyroxylin articles composed wholly of that substance are not included in the paragraph named, and hence are dutiable at 20 per cent ad valorem under paragraph 480 as manufactured articles not enumerated or provided for elsewhere in the act. The same issue as herein presented was decided adversely to the importers by this board in

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G. A. 7022 (T. D. 30634), and the board was affirmed by the United States Court of Customs Appeals (1 Ct. Cust. Appls., 118; T. D. 31118), based upon which we overrule the protest now before us and affirm the collector's decision.

(T. D. 31850—G. A. 7270.)

Wantage on ale in casks—Consolidation of hearings.

1. CONSOLIDATION OF PROTESTS ON HEARING.

It is a matter of discretion with the board to consolidate the hearing of protests when the goods imported are of the same kind and the question of law to be tried is the same, and especially when the importers are the same persons.

2. ALLOWANCE FOR WANTAGE.

A minimum allowance will be made of 3 gallons on every hogshead, 2 gallons on every barrel, half hogshead and kilderkin, and 1 gallon on every firkin which contains Bass' imported ale, caused by reason of failing to fill the casks bung full, and of loss by fermentation during the transit to this country.

3. NO OTHER ALLOWANCE PERMITTED.

But no deduction will be made for the hops, sediment, and lees which are contained in the casks, and are eliminated by a costly process for bottling purposes on this side by the importers.

United States General Appraisers, New York, September 9, 1911.

In the matter of protests 391987-1145, etc., of W. C. Cummings et al. against the assessment of duty by the collectors of customs at the ports of Boston, New York, and Chicago.

Before Board 3 (WAITE, SOMERVILLE, and HAY, General Appraisers; HAY, G. A., absent).

SOMERVILLE, *General Appraiser:* These importations consist of ale. The question at issue is, How much of this ale arrived at the ports of entry in this country so as to be subject to duty? The testimony in the case is quite voluminous, much of it having little bearing on the question under consideration.

It is a well-settled rule often recognized by the board that only so much of the merchandise is subject to duty as arrives in this country. Marriott *v.* Brune (9 How., 619); Lawder *v.* Stone (187 U. S., 281.) The proviso to paragraph 307 of the tariff act of August 5, 1909, has no such application to ale or beer. *In re* King, G. A. 7072 (T. D. 30796).

The article was assessed for duty under paragraph 308 of the tariff act of 1909, which reads as follows:

308. Ale, porter, stout, and beer, in bottles or jugs, forty-five cents per gallon, but no separate or additional duty shall be assessed on the bottles or jugs; otherwise than in bottles or jugs, twenty-three cents per gallon.

This was done on the largest amount authorized by the department circular T. D. 29929.

The importers make two claims: First, that a minimum allowance should be made for wantage or ullage upon the importations in question at the rate of 3 gallons on every hogshead, 2 gallons on every barrel, half hogshead, and kilderkin, and 1 gallon on every firkin

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and pin. This claim is based upon loss by reason of not filling the casks bung full and of loss by fermentation during the transit to this country. Secondly, that an allowance on the same basis as stated above should be made by way of deduction on account of the hops, sediment, and lees which are found in the ale, and is disclosed by the bottling process of the Bass Ale Co. in this country, who are the owners and importers of the goods.

The Government, in the first place, objects to the consolidation of the protests, and claims that each protest is a specific matter to be determined by itself. It is a matter of discretion with the board to consolidate the hearing of protests where the goods imported, the issue in dispute, and the owners are the same persons. There is nothing in this objection. Powell *v.* Gray (1 Ala., 77); Jackson *v.* Chamberlain (5 Cow., N. Y., 252); Thompson *v.* Shepherd (9 John., N. Y., 262); *In re* Leerburger, G. A. 5437 (T. D. 24715.) The ale is invoiced in imperial gallons, which may be converted into American gallons by adding one-fifth. Thomas McMullen & Co. do business on Burton-on-Trent. They manufacture the ale there and ship it to this country for bottling purposes. They ship about 93 per cent of the total bottling ale imported.

It appears from the testimony without any conflict whatever that the department made an allowance of 3 gallons per hogshead or cask, and other amounts proportionally, from 1879 up to August 5, 1909—a period of 30 years—when the present tariff act went into effect. This was done in accordance with department circular relating to the gauge of imported liquors reported as T. D. 6055, where it is stated that there is no accurate method for definitely ascertaining the quantity of beer actually received in any shipment, for the reason that if the cask be opened for gauging the liquor will thereby be spoiled. It is further stated in said circular:

> When necessary, packages containing malt liquors may be gauged for capacity by "outside measurement," the length and also the head and bung diameter being separately measured on the outside of the package, and from the length the thickness of the heads and from the diameter the mean thickness of the bung and bottom staves being deducted. The equivalent of the inside measurements being thus ascertained, the capacity will be calculated as in ordinary gauging.
>
> When the bung is not removed, the gauger should ascertain the wantage by sounding the line at which the liquor stands in the package, and then computing the capacity of the empty space. The department understands that when the outage of a package of malt liquors is as much as 3 or 4 gallons, the bung can be safely removed and the package be gauged in the ordinary manner.

On August 2, 1909, this ruling was revoked by the department in T. D. 29929, giving instructions for the gauging of beer imported in barrels or casks, which reads as follows:

> On and after August 15, 1909, duties will be assessed on beer imported in barrels or casks on the basis of the invoice quantity whenever the same is equal to or exceeds the capacity branded on the barrels or casks in liters. Fractions of a liter will not be considered.

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You will keep a record by numbers, in a book provided for that purpose, of the branded capacity of every barrel or cask imported at your port. The returns of branded capacities will be made pursuant to articles 1503 to 1505 of the Customs Regulations of 1908, governing the return of gaugers. When the capacity is not branded on any barrel or cask the same shall be gauged for capacity by outside measurement, the length, head, and bung diameters being separately measured on the outside. From the length the thickness of the heads and from the diameters the mean thickness of the staves should be deducted for inside measurement.

If the total invoice quantity is found to be less than the total branded capacity of all the barrels or casks covered by the invoice, the entry will be liquidated upon the quantity shown by the branded capacity.

The empty barrels or casks when exported should be tested from time to time to ascertain the actual capacity thereof, the gauging being done in the same manner as that governing the gauging under the internal-revenue laws of barrels or casks containing domestic beer.

Department's regulations (T. D. 6055) of December 5, 1883, are hereby modified accordingly.

On April 4, 1910, the department in T. D. 30495 extended T. D. 29929 of August 2, 1909, so as to cover the gauging of ale, porter, and stout in casks, kegs, barrels, and similar containers.

The importers introduced a Mr. Cook as a witness. He is the American manager for the Bass Co., and stated, "We are a direct branch of the foreign house." He had been 25 years in all departments, including the brewing department at Burton, and he was familiar with the preparation of the ale for the United States market. He testified that the ale runs from large vats, called "squares," into casks "in a turbid state of fermentation, boiling, bubbling, and frothing," and is shipped to the United States in from one to three weeks after being brewed. He was asked the question, "Are the casks filled to their capacity?" His answer was, "No; they can not be filled with a liquid which is in a state of fermentation and the goods are frothing into the casks." Normal wantage was defined by this Board *In re* Montague, G. A. 5939 (T. D. 26086), as "the difference between the capacity of the cask or bottle and the quantity of wine or liquor which is usually placed in it according to the custom of the trade, a certain vacancy being allowed for the expansion of such wines or liquors." The allowance for normal outage or wantage authorized by the Treasury Department in T. D. 26547 was 2½ per cent of the capacity of the barrel or cask containing imported wines or liquors. This was designed to approximately represent the usual amount of such outage or wantage in ordinary cases, and was based upon the fact that according to the custom of trade a certain vacancy is allowed for the expansion of such liquors or wines, the cask containing it not being filled to the bung. *In re* Bloomingdale, G. A. 7150 (T. D. 31203).

Ale is far more effervescent and expansive in its character than wine or liquor. Nothing is more natural, therefore, than that the

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hogshead and other containers should not be filled to their utmost capacity. These casks are prepared at the place of manufacture for the shipment of the ale. Porous pegs made of oak are inserted at the bung. They are so porous as to allow air and gas which is generated in the cask to escape, as well as a portion of the ale. These casks are also stated to be lightly coopered. Through the bunghole is inserted usually 1½ pounds of hops, which aid in preserving and adding flavor to the ale. The hops float in the cask, and in the course of fermentation during the voyage they are spent or thrown down to the bottom, mingling with the sediment or lees which is formed in the cask.

Mr. Edward G. Roach, the vice president of Thomas McMullen & Co., and for 25 years connected with the concern, stated that he was familiar with the manner in which the ale was brewed and prepared for shipment and with the condition in which it was received in this country. He stated that one could not fill a cask to the bung, because the ale is in the process of fermentation at the time it is put in the cask, and if it were put in under ordinary circumstances the casks would burst.

He further testified that there was a loss of ale through the seams of the casks and through the porous pegs during the voyage. He also testified that he had tapped in 20 years over 150,000 hogshead of ale, and that the total amount of normal wantage upon arrival in this country was approximately 6 gallons per hogshead, 3 gallons of which being the estimated normal quantity of hops, sediment, and lees, and the other 3 gallons being the amount of wantage similar to that heretofore allowed by the Government. A hogshead contains approximately about 63 gallons. Bass & Co., by a complicated and rather expensive system of bottling at their factory, obtain about 57 gallons of what they call usable ale. This is after eliminating the hops, sediment, and lees.

It appears from the testimony, however, that when this ale is sold abroad to restaurants or hotels or otherwise, it is sold so as to include the hops, sediment, and lees without making any deduction or elimination on account of their presence in the casks. The kind of ale manufactured by the Bass Co. is, as stated by Mr. Roach, about 57 gallons of "pure brilliant ale" from each hogshead. The lees contained in the casks is stated to be utilized by the company to some extent. One witness said about 50 per cent.

The testimony is greatly conflicting in reference to many minor details which it is not necessary to consider.

We are of opinion, however, that the importers are entitled approximately to a deduction of 3 gallons per hogshead and proportional amounts as claimed by them on smaller containers. This was allowed by the Government for 30 years prior to the present tariff act.

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The evidence, however, does not justify us in making any allowance by way of deduction for the hops, sediment, and lees. United States *v.* Reid, Murdoch & Co. (120 Fed. Rep., 242; 56 C. C. A., 538), affirmed by the Circuit Court of Appeals, and a writ of certiorari denied by the Supreme Court (190 U. S., 560; 23 Sup. Ct., 855). The case of Lincoln *v.* United States (178 Fed. Rep., 599; T. D. 30647) is manifestly distinguishable from the present case.

The protests are all sustained as to the first ground, claiming an allowance by way of deduction for a normal wantage of 3 gallons per hogshead of ale and a proportional allowance on the smaller casks as named before. The protests are, however, overruled as to the claim for allowance on account of the hops, sediment, and lees contained in the casks.

(T. D. 31851.)

Abstracts of decisions of the Board of General Appraisers.

Board 1.—Sharretts, McClelland, and Chamberlain. *Board 2.*—Fischer, Howell, and Cooper. *Board 3.*—Waite, Somerville, and Hay.

BEFORE BOARD 1, SEPTEMBER 6, 1911.

No. 26469.—IMITATION PRECIOUS STONES.—Protest 412510 of Samstag & Hilder Bros. (New York).

Imitation precious stones over 1 inch in dimensions, classified as manufactures of paste under paragraph 109, tariff act of 1909, were claimed to be dutiable as imitation precious stones (par. 449). Protest sustained.

SHARRETTS, *General Appraiser:* * * * The appraiser reports the merchandise as being paste glass ornaments in imitation of precious stones and over 1 inch in dimension, and cites Lorsch *v.* United States (135 Fed. Rep., 214; T. D. 25785) as the authority for his assessment. This decision (T. D. 25785) applied to merchandise imported under the act of 1897, but has no application under the act of 1909 for the reason that paragraph 449 is without words of limitation as to size. * * *

No. 26470.—IMITATION PRECIOUS STONES—BEADS.—Protests 420145, etc., of American Bead Co. (New York). Opinion by Sharretts, G. A.

The protests related to imitation coral cameos, imitation opals, and imitation doublets intended for use in the manufacture of jewelry, which were held dutiable as imitation precious stones under paragraph 449, tariff act of 1909, and to articles known commercially as "two-hole beads," classified as manufactures of glass or paste (par. 109) and held dutiable as beads (par. 421). Protests sustained.

No. 26471.—PROTESTS OVERRULED.—Protest 429734 of American Bead Co., and protests 119916, etc., of Garrison, Wright & Co. et al. (New York). Opinions by Sharretts, G. A.

Protests overruled for want of merit.

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No. 26472.—PROTESTS OVERRULED.—Protests 487046, etc., of F. L. Roberts & Co. et al. (Boston), protest 442662-34350 of G. W. Sheldon & Co., and protests 489477-36698, etc., of F. W. Thurston Co. et al. (Chicago), and protests 370932, etc., of Tuck High et al., protests 380322, etc., of New York Granite Co. et al., and protests 403380, etc., of C. B. Richard & Co. et al. (New York). Opinions by McClelland, G. A.

Protests overruled for want of merit.

No. 26473.—PROTESTS OVERRULED.—Protest 489775 of Asia Co. (Los Angeles), and protest 496187 of Freund & Freund, and protest 458256 of White Tar Co. (New York). Opinions by Chamberlain, G. A.

Protests overruled for want of merit.

BEFORE BOARD 2, SEPTEMBER 6, 1911.

No. 26474.—PROTESTS OVERRULED.—Protests 29755h, etc., of Lin F ng & Co. et al. (New York). Opinion by Howell, G. A.

Protests overruled for want of merit.

BEFORE BOARD 3, SEPTEMBER 6, 1911.

No. 26475.—TRUFFLES.—Protest 480458 of Reiss & Brady (New York). Opinion by Waite, G. A.

The board held that truffles were dutiable under paragraph 241, tariff act of 1897, by similitude to mushrooms. Protests sustained on the authority of Von Bremen *v.* United States (168 Fed. Rep., 889; T. D. 29501).

No. 26476.—SEAWEED IN CAKES.—Protest 483923 of Kwong Tai Chong (New York). Opinion by Waite, G. A.

Protest sustained as to seaweed in cakes on the authority of Abstract 25645 (T. D. 31624).

No. 26477.—STILL WINE.—Protest 491283 of M. Eisler (New York). Opinion by Waite, G. A.

Merchandise classified under paragraphs 303 and 304, tariff act of 1909, as a spirituous beverage, was held by the board to be dutiable as a still wine (par. 307), as claimed by the importer.

No. 26478.—WEIGHT OF OATMEAL.—Protest 491494 of Wakem & McLaughlin (New York). Opinion by Waite, G. A.

The board sustained the claim of the importers that an importation of oatmeal contained 12 tins to the case rather than 28 as assessed.

No. 26479.—OAT HULLS.—Protests 488574, etc., of K. E. Lehrbach (Buffalo). Opinion by Waite, G. A.

Merchandise composed of 60 per cent reground oat hulls, 40 per cent mill feed, and sweepings of the mill, all ground together, and classified as an unenumerated manufactured article under paragraph 480, tariff act of 1909, was held dutiable as oat hulls (par. 239). Protests overruled on the authority of United States *v.* McGettrick (139 Fed. Rep., 304; T. D. 26596).

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No. 26480.—Biscuits—Value.—Protest 472917 of Thomas Meadows & Co. (New York). Opinion by Waite, G. A.

The board sustained the claim of the importers that certain Huntley & Palmer biscuits were dutiable under paragraph 244, tariff act of 1909, as being of a value less than 15 cents per pound, rather than of a value more than 15 cents per pound as assessed.

No. 26481.—Unsweetened Biscuits.—Protests 493022, etc., of Woodward & Lothrop et al. (Washington). Opinion by Waite, G. A.

Huntley & Palmer breakfast and dinner biscuits, classified as sweetened biscuits under paragraph 244, tariff act of 1909, were claimed to be dutiable under the same paragraph as biscuits not specially provided for. Protests sustained. Note T. D. 30649.

No. 26482.—Protests Overruled.—Protest 451432 of Palmer, Harvey & Co. (Baltimore), protest 474232-36034 of International Forwarding Co., and protests 447766-34773, etc., of Wakem & McLaughlin et al. (Chicago), and protests 191539, etc., of Meyer & Lange, protests 304873, etc., of Sun Kwong On et al., and protests 452447, etc., of Unkart, Travis & Co (New York). Opinions by Waite, G. A.

Protests overruled for want of merit.

Before Board 1, September 7, 1911.

No. 26483.—Furs, Dressed—Beaver Strips.—Protests 423320, etc., of Revillon Freres et al. (New York). Opinion by McClelland, G. A.

Protests sustained as to furs dressed on the skin and as to beaver strips, on the authority of G. A. 7063 (T. D. 30765) and G. A. 7109 (T. D. 30990).

Before Board 2, September 7, 1911.

No. 26484.—Coverings of Specific-Duty and Free Goods.—Protest 501581 of Ault & Wiborg Co., and protest 502267 of Gerstendorfer Bros. (New York). Opinions by Fischer, G. A.

Protests sustained as to coverings of specific-duty goods, on the authority of United States *v.* Matagrin (T. D. 31406).

No. 26485.—Cylindrical Metal Containers.—Protest 476299 of Robert B. Ways (Baltimore), protests 413153, etc., of National Aniline & Chemical Co. (Cincinnati), protests 422267, etc., of Braun Chemical Co. (Los Angeles), and protests 415391, etc., of Dodge & Olcott Co. et al., protests 440653, etc., of McKesson & Robbins et al., and protests 459582, etc., of Ozomulsion Co. et al. (New York). Opinions by Fischer, G. A.

The protests related to sheet-metal drums containing permanganate of potash, caustic potash, and chloride of magnesium; sheet-metal drums or round tins of a capacity of 10 or 11 pounds containing caustic soda, bleaching powder, and chloride of calcium; 1 to 25 pound copper vessels containing oils of limes, lemon, orange, and bergamot; light-weight tins cylindrical in form containing essential oils, such as pennyroyal, rosemary, juniper, caraway, lavender, etc.; small lead vessels containing oils of cassia and anise seed; 1-pound tins containing saffron; and small tins or sheet-metal coverings or thin containers serving as an inside lining of wood overcasks containing red arsenic, carbolic-acid crystals, and cod-liver oil. These con-

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tainers were classified as cylindrical or tubular vessels under paragraph 151, tariff act of 1909, and were claimed to be free of duty as the usual containers of free merchandise or dutiable at the rate applicable to their contents. Protests sustained on the authority of United States *v.* Braun (T. D. 31596).

No. 26486.—METAL COVERINGS.—Protest 416538 of R. F. Downing & Co. (Boston). Opinion by Fischer, G. A.

Protests sustained as to hermetically sealed coverings. Abstract 24750 (T. D. 31272) followed.

No. 26487.—METAL RODS—WIRE RODS.—Protest 472734 of Thomson & Stacy (Port Townsend).

Merchandise invoiced as "round bars" or "rounds," consisting of metal rods of ¼ to ½ inch in diameter and about 13 to 18 feet in length, was classified as round iron under paragraph 120, tariff act of 1909, and claimed to be dutiable as wire rods (par. 134).

FISCHER, *General Appraiser:* * * * The testimony in the case shows that the metal rods are used in the manufacture of bedsteads. The proof, while it establishes that the rods are steel rods, and not iron, does not show that they are "wire rods." It is evident that the article in question may be a rod, and not necessarily a "wire" rod. If it were a wire rod the fact that it was iron, and not steel, or steel and not iron, would be of little importance, as the provision in paragraph 134 for wire rods includes iron as well as steel wire rods.

The only claim raised is that the merchandise is subject to classification as wire rods, and this the proof offered falls far short of proving. We accordingly overrule the protest without affirming the decision of the collector.

No. 26488.—PROTESTS OVERRULED.—Protest 478865 of Zellerbach Paper Co. (Los Angeles), protests 381404-3381, etc., of George W. Rueff (New Orleans), protests 415383, etc., of American Express Co., protests 400026, etc., of Read, Holliday & Sons et al., and protest 388833 of John A. Roebling's Sons Co. (New York), protest 503227 of Datz & Matthias, and protests 392356, etc., of Geisenheimer & Co. et al. (Philadelphia), protest 431916 of F. W. Myers & Co. (Plattsburg), protest 497528 of James Garcia (San Diego), protests 338213, etc., of John H. Boden & Co. (San Francisco), and protests 486732, etc., of Basquero & Co. et al. (San Juan). Opinions by Fischer, G. A.

Protests overruled for want of merit.

BEFORE BOARD 3, SEPTEMBER 7, 1911.

No. 26489.—HYACINTH BULBS.—Protests 493813, etc., of H. Waterer (Philadelphia). Opinion by Waite, G. A.

Protests sustained as to hyacinth bulbs on the authority of Breck *v.* United States (T. D. 31576).

No. 26490.—ARTISTIC ANTIQUITIES—FURNITURE—MIRRORS—PORCELAIN ELEPHANT.—Protest 506519 of American Express Co. (Boston), protest 483258-36796 of Emerson Hough (Chicago), and protest 451455 of Edmund L. Baylies (New York). Opinions by Waite, G. A.

Several articles of furniture, two mirrors, and a Chinese porcelain elephant, classified as furniture of wood under paragraph 215, mirrors (par. 109), and decorated china (par. 93), respectively, tariff act of 1909, were held free of duty as artistic antiquities (par. 717), as claimed by the importers.

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No. 26491.—Biscuits.—Protests 472775, etc., of Austin, Nichols & Co. et al. (New York). Opinion by Waite, G. A.

The board held certain Huntley & Palmer biscuits dutiable under paragraph 244, tariff act of 1909, as unsweetened, as claimed by the importers.

No. 26492.—Protests Overruled.—Protests 297259-26422, etc., of Downing, Judae & Co. et al. (Chicago), protest 464158 of Emery, Bird, Thayer Dry Goods Co. (Kansas City), protest 452613 of H. Jevne Co. (Los Angeles), protest 422609 of G. Collamore & Co., and protest 476455 of Koopman & Co. (New York), protests 491621, etc., of P. L. Allessandromi & Son, protest 491661 of W. K. Harris, and 491114 of F. B. Vandegrift & Co. (Philadelphia), and protest 469086 of Daudt Glass & Crockery Co. (Toledo). Opinions by Waite, G. A.

Protests overruled for want of merit.

No. 26493.—Agate Collar Buttons.—Protests 497767, etc., of H. Buss & Co. et al. (New York). Opinion by Somerville, G. A.

Buttons, classified under paragraph 427, tariff act of 1909, as buttons not specially provided for, were held dutiable as agate buttons according to line measurement, under the same paragraph.

No. 26494.—Smokers' Articles—Cigarette Cases.—Protests 423437, etc., of Knauth, Nachod & Kuhne (New York). Opinion by Hay, G. A.

Metal cigarette cases printed by a process of lithography and classified under paragraph 195, tariff act of 1909, as "boxes * * * composed wholly or in chief value of metal lacquered or printed by any process of lithography whatever" were claimed to be dutiable as smokers' articles (par. 475). Protests sustained. Note Cross *v.* United States (31457).

No. 26495.—Coverings.—Protests 355022, etc., of E. I. Du Pont de Nemours Powder Co. (San Francisco). Opinion by Hay, G. A.

Iron drums containing cylcerin, which were classified as unusual coverings, were claimed to be free of duty as the usual containers of a commodity subject to specific duty.

Protests sustained.

No. 26496.—Protests Overruled.—Protest 462699 of Chase & Sanborn (Boston), protest 491053-37428 of Gage Bros. & Co. (Chicago), and protest 493802 of American Thermo-Ware Co. (New York). Opinions by Hay, G. A.

Protests overruled for want of merit.

Before Board 1, September 8, 1911.

No. 26497.—Imitation Precious Stones.—Protest 495151-37224 of T. Buettner & Co. (Chicago). Opinion by Sharretts, G. A.

Imitation precious stones with foil backs, pierced with two holes, which were classified as manufactures of paste under paragraph 109, tariff act of 1909, were held dutiable as imitation precious stones (par. 449), as claimed by the importers. G. A. 6380 (T. D. 27420) followed.

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No. 26498.—Toy Moving-Picture Films.—Protests 488597–36511, etc., of Butler Bros. (Chicago).

Films for use in toy moving-picture machines, which were classified as toys under paragraph 431, tariff act of 1909, were claimed to be dutiable as "photographic film negatives * * * for use in any way in connection with moving-picture exhibits" (par. 474). Protests overruled.

Sharretts, *General Appraiser:* * * * Films for toy kinematographs are manifestly not intended for exhibition purposes, but for the use and amusement of children while at play. Toys are merely make-believe substances or things, usually in miniature and cheaply constructed. The toy films in question are of such a description, and in our opinion fall for duty under paragraph 431 and not under paragraph 474 of said act. In G. A. 7020 (T. D. 30613), affirmed by the United States Court of Customs Appeals (1 Ct. Cust. Appls., 370; T. D. 31455), toy magic-lantern slides were held to be dutiable as parts of toys and not under the specific provisions for magic-lantern slides. The decision in that case is, in our opinion, controlling in the case at bar.

No. 26499.—Articles of Personal Adornment.—Protests 469060–35339, etc., of Bernard, Judae & Co. (Chicago). Opinion by Sharretts, G. A.

Articles consisting of a small powder box, metal pencil holder, and mirror, attached to a chain on the end of which is a ring for attaching to the belt, classified as articles of personal adornment under paragraph 448, tariff act of 1909, were held dutiable as manufactures of metal (par. 199). Protests sustained on the authority of G. A. 7179 (T. D. 31348).

No. 26500.—Parts of Musical Instruments—Unfinished Violin Necks.—Protests 439499–34161, etc., of Lyon & Healy (Chicago). Opinion by Sharretts, G. A.

Protests sustained as to unfinished violin necks. G. A. 7247 (T. D. 31755) followed.

No. 26501.—Imitation Precious Stones—Parts of Jewelry.—Protest 425901–33059 of G. W. Sheldon & Co. (Chicago). Opinion by Sharretts, G. A.

Protest sustained as to imitation precious stones in the form of hearts and suitable for use in the manufacture of jewelry, on the authority of G. A. 7171 (T. D. 31313).

No. 26502.—Cigar Lighters—Cigarette Cases.—Protest 442199 of George Borgfeldt & Co., and protest 467000 of Massee & Co. (New York). Opinions by Sharretts, G. A.

Cigar lighters and cigarette cases classified as articles of personal adornment under paragraph 448, tariff act of 1909, were held dutiable as smokers' articles (par. 475). G. A. 7103 (T. D. 30943) followed.

No. 26503.—Silica Ware—Sufficiency of Protest.—Protest 413791 of F. L. Kraemer & Co. (New York).

The merchandise consisted of silica ware of the same character as was held dutiable in G. A. 6933 (T. D. 30036) as unenumerated manufactured articles. The only question at issue was the sufficiency of the protest. Protest sustained.

Sharretts, *General Appraiser:* * * * The importers in their protest inadvertently referred to paragraph 480 of the tariff act of 1909 in support of their contention. Inasmuch as paragraph 480 of the act of 1909 is a reenactment of section 6 of the act of 1897, the collector could not have been misled as to what the importer had in mind. The more especially is this made apparent by the fact that paragraph

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480 is in the free list of the act of 1897, while the protest claims 20 per cent duty as applicable under paragraph 480, which paragraph, in the act of 1909, relates to articles not enumerated or provided for wholly or partly manufactured and imposes 20 per cent ad valorem duty thereon. We regard the protest sufficient.

No. 26504.—Belt Buckles.—Protest 306457 of Baum, Cohen & Shire (New York). Opinion by Sharretts, G. A.

Belt buckles of paste and metal classified as articles of ground glass under paragraph 100, tariff act of 1897, were held dutiable as manufactures of paste (par. 112). Protest sustained on the authority of G. A. 6658 (T. D. 28391).

No. 26505.—Rosaries.—Protest 472224 of Benziger Bros., and protest 371498 of R. F. Downing & Co. (New York). Opinions by Sharretts, G. A.

Protests sustained as to rosaries on the authority of G. A. 7053 (T. D. 30731).

No. 26506.—Gun-Metal Mesh Bags and Purses.—Protests 425264 and 487617 of Abraham & Straus (New York). Opinions by Sharretts, G. A.

Protests sustained as to gun-metal mesh bags and purses on the authority of G. A. 7129 (T. D. 31089).

No. 26507.—Cut-Paste Articles.—Protest 331492 of H. B. Claflin Co. (New York). Opinion by Sharretts, G. A.

Protest sustained as to cut-paste articles. G. A. 6995 (T. D. 30444) followed.

No. 26508.—Imitation Jet.—Protest 427356 of Jordan-Marsh Co. (Boston), protests 259567-24719, etc., of C. D. Stone & Co. (Chicago), and protest 425190 of Leon Rheims (New York). Opinions by Sharretts, G. A.

Protests sustained as to imitation jet articles on the authority of United States *v.* Beierle (T. D. 31506).

No. 26509.—Protests Overruled.—Protest 474233-35849 of International Forwarding Co., and protests 425890-33003, etc., of G. W. Sheldon & Co. (Chicago), and protest 275456 of American Thermo-Ware Co., protests 244728, etc., of Baum, Linz & Cohen et al., protests 252692, etc., of A. C. Bosselman & Co. et al., protests 450925, etc., of R. F. Downing & Co., protest 435097 of M. L. Eckstein & Co., protest 373931 of H. G. McFaddin & Co., protest 455231 of H. Nordlinger's Sons, protest 458629 of Theodore Seltzer, and protests 406640, etc., of Snow's United States Sample Express Co. (New York). Opinions by Sharretts, G. A.

Protests overruled for want of merit.

No. 26510.—Fancy Matches.—Protests 495875-37853, etc., of Albert Pick & Co. et al. (Chicago).

McClelland, *General Appraiser:* These protests involve the question of the classification of matches at the rate of 35 per cent ad valorem under paragraph 436 of the tariff act of 1909, as fancy matches. The protest claim is that they are subject to duty under the provision in said paragraph for "matches, friction or lucifer, of all descriptions, per gross of one hundred and forty-four boxes, containing not more than one hundred matches per box, six cents per gross."

The record shows the matches involved to be in all respects similar to the matches passed upon in G. A. 7116 (T. D. 31017), designated as Exhibit 3 in that record. We have no evidence as to this particular kind of a match which would tend to lead to a different conclusion than that reached in G. A. 7116, *supra*. We do not regard

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the question involved as one to be determined by trade usage or commercial understanding as to the name under which the match was bought and sold prior to the enactment of the present tariff law or has been bought and sold since. In the case cited we said:

It is a well-settled rule of statutory construction that effect shall be given to every word used, if possible. Cooley's Constitutional Limitations, page 68; Market Company *v.* Hoffman (101 U. S., 113). Therefore, under this rule, regardless altogether of commercial understanding, if any of the matches represented by the exhibits are, according to the common meaning of the word, "fancy," we must so find.

A simple inspection of the match in question shows that its color gives it a fancy effect to the eye, and regardless of whether it is worth more or less than the ordinary safety match, we nevertheless adhere to our conclusion that it is a fancy match within the popular meaning of that term. We therefore overrule the protests and affirm the assessment of duty.

No. 26511.—Protests Overruled.—Protests 388972-30519, etc., of Downing, Judae & Co. et al., protests 402153-31365, etc., of International Forwarding Co. et al., protests 360832-29206, etc., of Many, Blanc & Co. et al., and protests 410847-32153, etc., of G. W. Sheldon & Co. et al. (Chicago), and protests 496562, etc., of Dublin, Morris & Kornbluth et al., protests 248499, etc., of Godillot & Co. et al., protests 499714, etc., of Sternlich & Scheer, and protests 487480, etc., of C. Weinschenker & Co. (New York). Opinions by McClelland, G. A.

Protests overruled for want of merit.

Before Board 2, September 8, 1911.

No. 26512.—Transfer Paper—Metal-Coated Paper.—Protest 422894-32678 of Wakem & McLaughlin (Chicago).

Paper used in the printing of decalcomanias and classified as metal-coated paper under paragraph 411, tariff act of 1909, was claimed to be dutiable under the same paragraph as surface-coated paper not specially provided for.

Fischer, *General Appraiser:* * * * The paper is coated with a vegetable gum and alumina, and the substance alumina used in the solution to coat the paper is not a metal, nor has it in any respect the form or character of a metal. To constitute a paper coated with metal or its solutions, the paper must have a coating in which metal, as metal, is present. Note ruling of the board in Abstract 24528 (T. D. 31207). The claim in the protest at 5 cents per pound under paragraph 411, as surface-coated paper, is sustained, and reliquidation will accordingly follow.

No. 26513.—Rough-Trimmed Mica.—Protest 486859 of Mica Manufacturing Co. (New York). Opinion by Fischer, G. A.

Protest sustained as to rough-trimmed mica on the authority of United States *v.* Myers (T. D. 31301).

No. 26514.—Protests Overruled.—Protest 504819-37262 of G. W. Sheldon & Co. (Chicago), and protest 496474 of American Button Works, protests 429378, etc., of Consolidated Color & Chemical Co. et al., and protest 459874 of Karl Neuhoff (New York). Opinions by Fischer, G. A.

Protests overruled for want of merit.

No. 26515.—Malines Nets.—Protests 498298, etc., of F. Ludewig & Co. (New York). Opinion by Howell, G. A.

Protests sustained as to Malines nets on the authority of Abstract 24701 (T. D. 31255).

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No. 26516.—PROTESTS ABANDONED.—Protests 471069-35700, etc., of Carson, Pirie, Scott & Co. et al., protests 402140-31227, etc., of Diggles & Gordon et al., and protests 422567-32889, etc., of G. W. Sheldon & Co. et al. (Chicago), and protests 297816, etc., of James McCutcheon & Co. et al. (New York). Opinions by Cooper, G. A.

Protests abandoned.

BEFORE BOARD 3, SEPTEMBER 8, 1911.

No. 26517.—PROTESTS OVERRULED.—Protests 489467-36606, etc., of A. Russo & Co. et al. (Chicago), and protest 468444 of J. E. Kerr & Co. (New York). Opinions by Waite, G. A.

Protests overruled for want of merit.

BEFORE BOARD 1, SEPTEMBER 9, 1911.

No. 26518.—ENAMEL COLORS.—Protests 347619, etc., of O. Hommel Co. (New York). Opinion by McClelland, G. A.

Protests sustained as to enamel colors containing lead on the authority of the United States *v.* Marsching (1 Ct. Cust. Appls., 216; T. D. 31257).

Decisions on Applications for Rehearings.

No. 26519.—REHEARING GRANTED—COVERINGS.—Application by the protestants for rehearing on protests 417364, etc. (New York), of Acker, Merrall & Condit Co. et al., decided August 12, 1911, Abstract 26335 (T. D. 31813). No. 325. Before Board 3, August 23, 1911.

Application granted. Certain coverings are claimed to be the usual containers of merchandise free of duty or subject to specific duty and therefore nondutiable.

No. 26520.—REHEARING GRANTED—COVERINGS.—Application by the protestants for rehearing on protest 416960-32384 (Chicago) of M. L. Barrett & Co., decided August 12, 1911, Abstract 26335 (T. D. 31813). No. 326. Before Board 3, August 23, 1911.

Application granted. Certain coverings are claimed to be the usual containers of merchandise subject to specific duty and therefore nondutiable.

No. 26521.—REHEARING GRANTED—WILLOW BASKETS.—Application by the protestants for rehearing on protest 417104 (Philadelphia) of O. G. Hempstead & Son, decided July 14, 1911, Abstract 26095 (T. D. 31757). No. 317. Before Board 1, August 24, 1911.

Application granted. Willow baskets classified as manufactures of willow under paragraph 212, tariff act of 1909, are claimed to be dutiable as baskets of wood (par. 214).

No. 26522.—REHEARING GRANTED—FISH.—Application by the protestants for rehearing on protest 497541 (Buffalo) of Robbins Fish Co., decided August 14, 1911, Abstract 26345 (T. D. 31832). No. 324. Before Board 1, August 24, 1911.

Application granted. Merchandise classified as fish in tins under paragraph 270, tariff act of 1909, is claimed to be dutiable as fresh or frozen fish (par. 273).

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No. 26523.—Rehearing Denied.—Application by the Government for rehearing on protests 451754, etc. (Boston), of P. Pastene & Co., decided July 25, 1911, Abstract 26203 (T. D. 31788). No. 329. Before Board 3, August 24, 1911.

Application denied.

No. 26524.—Rehearing Denied.—Application by the protestants for rehearing on protest 278575 (New York) of Marrone & Lofaro, decided July 25, 1911, Abstract 26207 (T. D. 31788). No. 334. Before Board 3, August 24, 1911.

Application denied.

No. 26525.—Rehearing Granted—Paint.—Application by the protestants for rehearing on protests 479520, etc. (New York), of A. C. Horn & Co., decided July 14, 1911, Abstract 26113 (T. D. 31757). No. 320. Before Board 1, August 31, 1911.

Application granted. Merchandise classified as paint under paragraph 56, tariff act of 1909, is claimed to be dutiable as a coal-tar color (par. 15) or as a chemical compound (par. 3).

No. 26526.—Rehearing Granted—Peru Balsam.—Application by the Government for rehearing on protest 474473 (New York) of A. A. Stillwell Co., decided August 11, 1911. Abstract 26326 (T. D. 31813). No. 323. Before Board 1, August 31, 1911.

Application granted. An article which the board found to be Peru balsam, and held free of duty as balsam under paragraph 559, tariff act of 1909, is claimed to have been properly classified as a chemical mixture (par. 3).

No. 26527.—Rehearing Denied.—Application by the Government for rehearing on protests 432561, etc. (New York) of F. Schumacher & Co., decided July 17, 1911, G. A. 7248 (T. D. 31756). No. 310. Before Board 2, September 5, 1911.

Application denied.

No. 26528.—Rehearing Denied.—Application by the protestants for rehearing on protests 429519, etc. (New York), of A. J. Hague & Co. et al., decided July 28, 1911, Abstract 26227 (T. D. 31788). No. 331. Before Board 2, September 5, 1911.

Application denied.

No. 26529.—Rehearing Denied.—Application by the protestants for rehearing on protest 484378 (New York) of L. Mendelson Co., decided July 19, 1911. Abstract 26170 (T. D. 31774). No. 332. Before Board 2, September 5, 1911.

Application denied.

No. 26530.—Rehearing Denied.—Application by the protestants for rehearing on protests 449716, etc. (Detroit), of B. R. Lawrence, decided July 11, 1911, Abstract 26053 (T. D. 31757). No. 319. Before Board 2, September 6, 1911.

Application denied.

No. 26531.—Rehearing Granted—Hair Nets.—Application by the protestants for rehearing on protest 454142 (New York) of H. Bauman & Co., decided July 28, 1911, Abstract 26227 (T. D. 31788). No. 318. Before Board 2, September 8, 1911.

Application granted. Hair nets classified as having been made on the Lever or Gothrough machine under paragraph 350, tariff act of 1909, are claimed to be dutiable as silk nets (par. 402).

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(T. D. 31852.)

Construction of section 14 (b) of Department Circular No. 54 (1910).

[Circular No. 57.]

TREASURY DEPARTMENT, *September 13, 1911.*

SIR: Acknowledgment is made of your letter of July 8, 1911, inclosing a communication dated July 7, 1911, and signed by H. H. Stryker, president the Surety Association of America; Joel Rathbone, vice president National Surety Co. of New York; and R. R. Brown, superintendent of agencies, American Surety Co. of New York, in which a construction of section 14 and subparagraph (*b*) of Department Circular No. 54, dated September 21, 1910, is requested.

The particular paragraph of the section referred to and of which a construction is desired reads as follows:

(*b*) Bonds of executors, administrators, trustees, guardians, and other fiduciaries; in which cases a certificate of the judge of the probate court, setting forth the measure of liability upon which he fixed the penalty of the bond, will be accepted by the department as evidence of the amount at risk when such certificate is filed with the supplement covering the bond. Credit will also be allowed for indemnifying agreements executed by sole heirs or beneficiaries of estates releasing the surety from liability: *Provided*, That a copy of such agreement shall, in each instance, be filed with the supplement covering such risk, together with satisfactory proof as to outstanding debts.

The case under consideration is one where several heirs or beneficiaries of an estate, and less than all, desire to release surety companies from liability under bonds given by them in excess of their respective qualifying powers, and where such heirs or beneficiaries are willing to execute indemnifying agreements to the surety companies to the extent of the individual interests of such heirs or beneficiaries in the estates, and you ask how this can be accomplished.

Upon full consideration of the matter, you are informed that in the case presented by you it will be necessary for the acts of the persons executing such indemnifying agreements to be approved and formally ratified by all of the coheirs or cobeneficiaries having any interest whatsoever in the estates. Such indemnifying agreements must also be submitted to and approved by the proper officers of the court having jurisdiction of the subject matter.

Certified copies, under seal of the court, of such indemnifying agreements, when ratified and approved as stated above, must be filed with the proper courts and must, in each instance, be furnished to the Treasury Department and attached to the particular supplements covering the risks and supported by satisfactory proof as to all outstanding debts against the estates.

The underlying principles of this construction of the departmental regulations have been approved by the Solicitor of the Treasury in an opinion rendered under date of August 21, 1911.

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The foregoing construction of the regulations of the department, with reference to the execution of indemnifying agreements by several coheirs or cobeneficiaries, and less than all, will be promulgated for the information of bonding companies and all others concerned.

By direction of the Secretary.

Respectfully, R. O. BAILEY,
Assistant Secretary.

Mr. ——— ———.

(T. D. 31853.)

Additional list of customs notaries.

[Omitted from this edition.]

(T. D. 31854.)

Pine cones.

Pine cones similar to those the subject of the decision of the Board of United States General Appraisers of May 16, 1911, Abstract 25595 (T. D. 31616), dutiable on the total weight of the cones.

TREASURY DEPARTMENT, *September 15, 1911.*

SIR: I have to acknowledge the receipt of your letter of the 7th ultimo, in regard to the classification of pine cones, the subject of the decision of the Board of United States General Appraisers of May 16, 1911, Abstract 25595 (T. D. 31616).

It appears that the seeds or kernels were separated from the cones; that duty was assessed upon the weight of the seeds or kernels at the rate of 10 cents per pound under paragraph 266 of the tariff act of 1909, and that the board sustained the protest of the importers that the merchandise was properly dutiable under paragraph 283 of the said act at the rate of 1 cent per pound.

The department does not deem it expedient to further litigate the question whether these kernels are dutiable as seeds or nuts, but as it appears that this merchandise is usually imported with the cones and is bought and sold in that form, it is of the opinion that the cones should be treated as entireties.

You are accordingly directed, 30 days from the date hereof, to assess duty upon the merchandise under consideration under paragraph 283 upon the total weight of the cones at the rate of 1 cent per pound.

Respectfully, JAMES F. CURTIS,
(53023.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 31855.)

Silk noils.

Department's decision of August 18, 1911 (T. D. 31824), directing that duty should be assessed upon silk noils combed or uncombed, not to become operative until 90 days from said date.—T. D. 31824 of August 18, 1911, modified accordingly.

TREASURY DEPARTMENT, *September 16, 1911.*

SIR: Referring to the department's letter of August 18, 1911 (T. D. 31824), directing that 30 days from the date thereof silk noils, whether combed or uncombed, should be assessed with duty at the rate of 35 cents per pound under paragraph 396 of the tariff act, I have to advise you that after a careful consideration of this matter and to the end that importers may be given a further opportunity to adjust their business to the change in the classification of the merchandise in question, the department deems it expedient to extend the period referred to, to 90 days from August 18, 1911.

You will be governed accordingly.

Respectfully, JAMES F. CURTIS,
(84034.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 31856.)

Scrap iron and steel from Cuba.

Scrap resulting from the use in Cuba of iron and steel manufactures shipped to that island from foreign countries not entitled to benefit of Cuban reciprocity convention.

TREASURY DEPARTMENT, *September 16, 1911.*

SIR: I have to acknowledge the receipt of your letter of the 23d of June, 1911, transmitting the request of certain importers for the application of the reduced rate under the Cuban reciprocity convention to certain scrap iron and steel imported from Cuba May 20, 1911.

You state that it has never been the practice at your port to consider Cuban scrap iron of foreign origin as the product of the soil or industry of Cuba, and you submit a letter from the collector of customs at New York expressing the view that such merchandise should be regarded as the product of the industry of Cuba.

The department has given this question careful consideration, and has reached the conclusion that scrap resulting from the use in Cuba of iron and steel manufactures shipped to that island from foreign countries is not a product of the industry of Cuba, within the meaning of the reciprocity convention. You will, therefore, collect duty on such scrap at the full rate, leaving the importers to their remedy by protest under subsection 14 of section 28 of the tariff act of 1909.

Respectfully, JAMES F. CURTIS,
(23803.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Philadelphia, Pa.*

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(T. D. 31857.)

Drawback on oilcloth.

Drawback on oilcloth manufactured by the Standard Oil Cloth Co., of New York City, with the use of imported china clay and linseed oil or linseed oil manufactured from imported flaxseed.

TREASURY DEPARTMENT, *September 14, 1911.*

SIR: Drawback is hereby allowed under section 25 of the tariff act of August 5, 1909, and the regulations promulgated thereunder (T. D. 31695 of June 16, 1911), on oilcloth manufactured by the Standard Oil Cloth Co., of New York City, with the use of imported china clay and linseed oil or linseed oil manufactured from imported flaxseed.

The allowance shall not exceed the quantities shown in the schedule forming part of the manufacturers' sworn statement dated July 31, 1911, transmitted herewith for filing in your office.

Where the oil used has been manufactured from imported seed, the certificate of the manufacturer of the oil shall be given and the drawback shall be estimated in accordance with T. D. 30737 of June 29, 1910.

Respectfully, JAMES F. CURTIS,
(88659.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 31858.)

Drawback on shade rollers.

Drawback on shade rollers manufactured by the American Shade Roller Co., of Brooklyn, N. Y., with the use of imported lumber.

TREASURY DEPARTMENT, *September 15, 1911.*

SIR: Drawback is hereby allowed under section 25 of the tariff act of August 5, 1909, and the regulations promulgated thereunder (T. D. 31695 of June 16, 1911), on shade rollers manufactured by the American Shade Roller Co., of Brooklyn, N. Y., with the use of imported lumber.

The allowance shall not exceed the quantities of imported lumber actually used as set forth in the sworn statement of the Vermont Shade Roller Co., dated June 28, 1911, transmitted herewith for filing in your office. The sworn statement of the American Shade Roller Co., dated June 15, 1911, is also transmitted herewith for filing in your office.

Respectfully, JAMES F. CURTIS,
(87883.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 31859.)

Drawback on velvet-lined boxes.

Drawback on velvet-lined boxes manufactured by the Gillette Safety Razor Co., of Boston, Mass., with the use of imported velveteen.

TREASURY DEPARTMENT, *September 15, 1911.*

SIR: Drawback is hereby allowed under section 25 of the tariff act of August 5, 1909, and the regulations promulgated thereunder (T. D. 31695 of June 16, 1911), on velvet-lined boxes manufactured by the Gillette Safety Razor Co., of Boston, Mass., with the use of imported velveteen.

The allowance should not exceed, inclusive of wastage, that set forth in the manufacturers' sworn statement dated September 6, 1911, which is inclosed herewith for filing in your office.

Respectfully, JAMES F. CURTIS,
(89692.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Boston, Mass.*

(T. D. 31860.)

Drawback on steel railway tires.

Drawback on steel railway tires manufactured by the Railway Steel Spring Co., of New York City, with the use of imported steel, pig iron, ferromanganese, and ferrosilicon.

TREASURY DEPARTMENT, *September 15, 1911.*

SIR: Drawback is hereby allowed under section 25 of the tariff act of August 5, 1909, and the regulations promulgated thereunder (T. D. 31695 of June 16, 1911), on steel railway tires manufactured by the Railway Steel Spring Co., of New York City, with the use of imported steel, pig iron, ferromanganese, and ferrosilicon.

There shall be filed with each drawback entry a sworn abstract from the manufacturing records showing the stock number of the materials and kind, the weight of each kind of material used, the weight of each ingot produced, the total weight of each heat, the wastage with the value thereof, the weight of the steel railway tires produced, and the value of the imported materials.

The allowance shall not exceed the quantity of imported material used, with the proper allowance for wastage according to the value thereof.

The manufacturers' sworn statement dated August 8, 1911, is inclosed herewith for filing in your office.

Respectfully, JAMES F. CURTIS,
(90015.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 31861.)

Free entry under paragraphs 519, 650, and 661, tariff act of 1909—Affidavits.

Article 710 of the Customs Regulations of 1908 and T. D. 30525 of April 11, 1910, amended as to filing of affidavits from institutions.

TREASURY DEPARTMENT, *September 15, 1911.*

SIR: The department duly received your letter of July 28 last, in which you state that considerable difficulty has been experienced by various dealers at your port in obtaining affidavits from educational institutions in time to file with the entry, as required by article 710 of the Customs Regulations and Treasury Decision 30525 of April 11, 1910, in the case of articles imported for said institutions and entitled to entry free of duty under the provisions of paragraphs 519, 650, and 661 of the tariff act. You state that there are frequent cases where the importers are not at fault, and where a hardship is imposed by the enforcement of article 710 of the Customs Regulations, and suggest that the regulations be modified to cover such exceptional cases.

The department is of the opinion that, in cases where the required affidavits have not been furnished at the time of entry for articles entitled to free entry under paragraphs 519, 650, and 661, deposit duties may be accepted and refund thereof made upon the production of the affidavit of the executive officer of the institution, provided that the dealer shall, at the time of entry, file an affidavit naming the institution for which the articles are imported and giving the reason why the production of the affidavit of the executive officer of said institution is impossible at that time, and stating that it is intended to produce the required affidavit prior to liquidation. Article 710 of the Customs Regulations of 1908 and Treasury Decision 30525 of April 11, 1910, are hereby amended accordingly.

Respectfully, JAMES F. CURTIS,
(74300.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 31862.)

Velvets or velours.

Appeal directed from the decision of the Board of United States General Appraisers of July 17, 1911, G. A. 7248 (T. D. 31756), involving the classification of velvets or velours.

TREASURY DEPARTMENT, *September 16, 1911.*

SIR: The department duly received your letter of July 31, 1911, relative to the decision of the Board of United States General Appraisers of July 17, 1911, G. A. 7248 (T. D. 31756), wherein it was held

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that certain silk fabrics with a partly pile surface were properly dutiable under the provision of paragraph 399 of the tariff act of 1909 for—

Velvets * * * and other pile fabrics * * * weighing not less than five and three-fourths ounces per square yard, one dollar and fifty cents per pound.

In view of the importance of the issue you are hereby requested to file in the name of the Secretary of the Treasury an application with the United States Court of Customs Appeals for a review of the said decision, in accordance with the provisions of subsection 29 of section 28 of the tariff act of 1909.

Respectfully,
(90322.)

JAMES F. CURTIS,
Assistant Secretary.

Mr. WM. L. WEMPLE,
Assistant Attorney General, New York.

(T. D. 31863—G. A. 7271.)

Cotton initials.

The provision for "ornaments" in paragraph 349, tariff act of 1909, includes cotton initials which are ornamental in character, although they may serve as a mark of identification as well as being a means of adorning.

United States General Appraisers, New York, September 14, 1911.

In the matter of protest 444092 of Campbell, Metzger & Jacobson against the assessment of duty by the collector of customs at the port of New York.

Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers).

COOPER, *General Appraiser:* The merchandise, invoiced as "embroidered letters" and returned by the appraiser as "cotton ornaments," was classified by the collector under paragraph 349, tariff act of 1909, and duty collected thereon at the rate of 60 per cent ad valorem. It is claimed that the merchandise is properly dutiable as manufactures of cotton under paragraph 332 of said act at the rate of 45 per cent ad valorem.

The evidence submitted by the protestants shows that the initials are made from coronation cord; that said cord is produced by winding, by machine, two or three threads on a cotton cord; that the cord is then glued, in the form of a letter or initial, to a sheet of paper, the letter or initial having first been stamped or printed on the paper; that the completed initials are intended to be sewn on articles of wearing apparel, sheets, pillow shams, etc., for purposes of identification.

In support of their claim the protestants contend that the articles are not embroidered. The evidence sustains this contention. It is further contended that the initials are plain script; that they are in no sense ornaments; and that they simply furnish a neat identifying mark, and are not intended for adornment or display.

In G. A. 2546 (T. D. 14917), cited by the attorney for the protestants, the board held so-called cotton initials dutiable as manufactures

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of cotton under paragraph 355, tariff act of 1890, rather than as embroidery or trimmings under paragraph 373 of that act. The latter paragraph, however, was more limited in its scope than is paragraph 349 of the present act, which contains a provision for cotton ornaments, while paragraph 373 of the act of 1890 had no such provision. In G. A. 2546, *supra*, the board stated that the merchandise then under consideration was substantially of the same character and description as that covered by G. A. 2381 (T. D. 14623), wherein the merchandise is described as shirt labels. The language of paragraph 349 of the present act is materially different from that used in paragraph 373 of the act of 1890, and it is apparent that the merchandise in this case is not the same as that covered by the decision cited. That decision, therefore, has no application to the question now before the board.

An examination of the sample submitted shows that the initials are clearly ornamental in character. Although they are used for purposes of identification, as stated by the witness, they necessarily adorn the articles to which they are attached. We can not agree with the protestants' contention that their sole use is for identifying ownership when a much plainer and less conspicuous label would answer that purpose equally as well. In fact, the initials, as represented by the sample before us, are something more than a mere mark or label of identification.

An ornament is "an addition that contributes to the beauty or elegance of a thing; an embellishment; an adornment" (Standard Dictionary); "anything that adorns or beautifies" (Webster's New Standard Dictionary). But an ornament may serve a utilitarian purpose as well as being a means of adorning.

We conclude, therefore, that the initials are dutiable under the provision in paragraph 349 for cotton ornaments.

The protest is overruled and the decision of the collector affirmed.

(T. D. 31864—G. A. 7272.)

Lock washers.

So-called "lock washers," which are made of steel and so constructed that when properly fastened they prevent nuts from backing off bolts, and which have no name uniformly and generally recognized in trade, are dutiable as "washers" under paragraph 162, tariff act of 1909, rather than as manufactures of metal under paragraph 199 of said act.

United States General Appraisers, New York, September 16, 1911.

In the matter of protests 462913, etc., of The Motor Car Equipment Co. et al. against the assessment of duty by the collector of customs at the port of New York.

Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers).

FISCHER, *General Appraiser:* The merchandise in question is described by the appraiser of the port of New York in his special reports

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as "so-called lock washers made of steel." The said articles not only serve as "washers" but are also so constructed that when fastened they prevent the nuts from backing off the bolts.

On the ground that these articles were not the ordinary "washers" of commerce, the merchandise was classified for duty by the collector under the provisions of paragraph 199, tariff act of 1909, as manufactures of metal not specially provided for, and assessed at 45 per cent ad valorem. The importers contest said assessment and claim that the so-called lock washers are properly dutiable at three-fourths of 1 cent per pound under paragraph 162 as "washers" or "nuts" of wrought iron or steel.

The question here presented for determination is precisely similar to that raised in the Hoffnung case, decided in G. A. 7101 (T. D. 30933), wherein this board said:

> It is true that these articles are not the common washers well known to everybody, but they are nevertheless washers. They are intended for and in fact used only as washers, have always been so used, and differ from the old-fashioned article only in that they have an improved device to prevent the nut from slipping after it has been properly fastened. This extra device or improvement does not rob the article of its character as a washer, and the provision in the tariff for washers fully covers it.

In the case at bar the Government sought to establish the fact that these articles were commercially known as nut locks and not as washers. There is no provision in the tariff for nut locks by name, and as we view the record it fails to prove the Government's contention. The witnesses for the Government called the articles "nut locks," "nut spring locks," "nut lock washers," "fast nut washers," "lock washers," "split ring washers," and "split washers." The only conclusion to be formed from the testimony is that such articles as we have here before us have no uniform and general trade name, and viewed in that light, if they answer to the common and ordinarily understood meaning of the word "washers," it would be error to exclude the articles from classification under paragraph 162. The following summarizes some of the testimony given by Government witnesses, who were called for the purpose of showing the character of the merchandise covered by the importations involved and as explanatory of the trade meaning of the term "washers."

William C. Dodd, president of the National Lock Washer Co., a concern that manufactures a similar article, testifies:

> Q. As a matter of fact, have you ever heard anything spoken of as a lock washer?—A. I have.
>
> Q. What was that article?—A. A nut lock spring; nut lock.
>
> Q. Similar to Exhibit 1?—A. Yes.
>
> Q. Has that ever been called a split washer by people in the trade?—A. Yes; I think it has.

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John B. Ross, general manager of the Positive Lock Washer Co., another concern that makes a similar article, testifies:

Q. Now, as a matter of fact, have you ever heard the term "lock washer" used in your trade?—A. Yes.

Q. Articles almost identical with Exhibit 1 are sometimes known as lock washers?—A. Yes.

Q. Are these ever ordered by the name of split washers?—A. Now and again some call them split spring washers; yes, sir.

Q. And then the names that are used in relation to Exhibit 1 are various; nut lock, lock washer, spring washer, split washer?—A. Yes.

Fred S. Sayre, of the same company, testifies:

Q. What do they [the Positive Lock Washer Co.] make?—A. They make nut locks.

Q. Anything else?—A. Nothing but nut locks.

Q. They make lock washers?—A. Well, lock washers.

Q. They do?—A. Yes * * *; we make nut locks and lock washers.

Q. What is the distinction between them?—A. One is the patented washer; the *washer is a patented* article and the other is not.

Q. And what does that consist of?—A. That is a barb.

Thus the same article as that under consideration with added features is a washer, and the simple one according to this witness is not. The witness further on in his testimony states that these so-called nut locks are called at times in the trade under various designations, such as "split washers," "split ring washers" and "lock washers." Other witnesses, H. J. Mitchell, J. E. Wilson, and Atwood Paxson, who were called by the Government, gave testimony in a like manner. If there existed any doubt as to the proper classification of these articles in the previous case, that condition certainly no longer exists, for the testimony absolutely fixes the character of these articles and their use and in our opinion it establishes their status as washers. The provision for washers is not limited, and if they are called split washers or lock washers to particularly describe them that will not exclude the said articles from classification under the provision for "washers," as otherwise words of description essential to the identification of particular styles of like articles would change the classification of spikes and nuts mentioned in the same paragraph, which are ordinarily called for under particular names, as "track spikes," "dock spikes," "round nuts," "square nuts," etc. In fact, under such construction no nut, spike, or washer would be covered by the provisions of paragraph 162.

We are satisfied that the importers' claims are well founded, and on the record and for the reasons expressed herein, as well as in G. A. 7101, *supra*, we sustain the protests. The decision of the collector in each case is hereby reversed.

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(T. D. 31865—G. A. 7273.)

Brass fob chains—Articles of personal adornment.

Fob chains composed of brass, which after being plated with gold or silver are intended for free distribution for advertising purposes, are articles designed to be worn on or about the person for ornament or display and dutiable at compound rates equivalent to 85 per cent ad valorem under paragraph 448 of the tariff act of 1909.

United States General Appraisers, New York, September 18, 1911.

In the matter of protest 421961 of A. H. Post & Co. against the assessment of duty by the collector of customs at the port of New York.

Before Board 1 (SHARRETTS, McCLELLAND, and CHAMBERLAIN, General Appraisers).

SHARRETTS, *General Appraiser:* The articles covered by this protest are fob chains composed of brass, which, subsequent to importation, are to be plated with gold or silver. These chains are not intended for sale, but for free distribution to advertise "coaster brakes," a representation of the brake and the name of the manufactured article appearing on the pendant forming a part of the fob chain. At the hearing of the case the witness for the importers, when asked on cross-examination if the articles are conceded to be brass and are a fob to be attached to a watch to be worn in the fob pocket, answered "Yes."

Paragraph 448 of the act of 1909, under which the merchandise in question was assessed with duty at 85 per cent ad valorem, provides for brass chains, among other designated articles, whether finished or unfinished, and the goods are of such a description. It is manifest that the importer bases his claim that duty should have been assessed on these chains at 45 per cent ad valorem under paragraph 199 on the theory that articles intended for gratuitous distribution are not included in the provisions of paragraph 448. We do not agree with the soundness of such a contention. It might be argued with as much force that advertising goods not intended for sale when imported are exempt from the exaction of any duty. Such is not the case, however. All imports, unless otherwise stipulated in the law, are subject to duty at the rate most specifically provided therefor, and it only remains to be determined whether brass watch chains designed for advertising purposes are also designed to be worn as apparel or carried on or about or attached to the person. The importers' witness testified that such was their intended ultimate use, and his admission, we think, disposes of the whole question at issue. The articles were designed to be worn on or about the person for ornament or display, and the mere fact that they were utilized as a medium for advertising domestic wares does not operate to remove them from the paragraph where they are provided for by specific enumeration.

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Counsel for the importers calls the attention of the board to Abstract 22909 (T. D. 30447), wherein it was held that souvenir brooches and stick pins intended for free distribution for advertising purposes, classified as jewelry under paragraph 434 of the tariff act of 1897, were properly dutiable as manufactures of metal under paragraph 193 of that act. The only question presented in the case cited was, Were the articles jewelry or not? The board found that the merchandise, which was flimsy in construction and of insignificant value, was not jewelry.

In the present case, however, the issue is not whether the articles in question are jewelry, but whether or not they are articles designed to be worn on the person for purposes of adornment. Based on the exhibit and the testimony, in which it is conceded that the chains are valued at more than 20 cents per dozen pieces, we hold that the intended purpose and use thereof is for wear on the person for adornment, and that they were properly classified and assessed with duty at the rate applicable thereto. The protest is accordingly overruled, the collector's decision being affirmed.

(T. D. 31866.)

Abstracts of decisions of the Board of General Appraisers.

Board 1.—Sharretts, McClelland, and Chamberlain. *Board 2.*—Fischer, Howell, and Cooper. *Board 3.*—Waite, Somerville, and Hay.

BEFORE BOARD 1, SEPTEMBER 11, 1911.

No. 26532.—SNUFF BOXES.—Protest 429013 of Alfred Andresen & Co. (Minneapolis). Opinion by Sharretts, G. A.

Brass, nickel-plated, and German-silver snuff boxes classified as articles of personal adornment under paragraph 448, tariff act of 1909, were held dutiable as manufactures of metal (par. 199). Protest sustained on the authority of G. A. 7129 (T. D. 31089).

No. 26533.—CUT-PASTE ARTICLES.—Protests 302198 and 311140 of Thomas Meadows & Co. (New York). Opinions by Sharretts, G. A.

Protests sustained as to cut-paste articles on the authority of G. A. 6995 (T. D. 30444).

No. 26534.—PRECIOUS STONES, CUT.—Protests 353343 of F. William Gertzen (New York). Opinion by Sharretts, G. A.

Pieces of onyx, with carved cameo heads, cut and polished and intended for settings of jewelry, were held dutiable as precious stones cut but not set under paragraph 435, tariff act of 1897. Protest sustained in part.

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No. 26535.—Toy Whistles.—Protest 442690 of George Borgfeldt & Co. (Philadelphia). Opinion by Sharretts, G. A.

Toy whistles classified as manufactures of metal under paragraph 193, tariff act of 1897, were held dutiable as toys (par. 418), the appraiser reporting that he would now so classify them.

No. 26536.—Shell Cameos.—Protest 417717 of Benedict & Warner (New York). Opinion by Sharretts, G. A.

Protests sustained as to shell cameos on the authority of G. A. 6936 (T. D. 30068).

No. 26537.—Blown Glassware—"Ampulla."—Protest 376308 of Kny-Scherer Co. (New York). Opinion by Sharretts, G. A.

The protest related to small vials of glass used as containers for hypodermic fluids and known as "ampulla." After importation they are sterilized, filled, and sealed by fusing the mouth of the vial for the purpose of preserving the contents. They were classified under paragraph 99, tariff act of 1897, as bottles or vials composed of molded or pressed glass, and claimed to be dutiable as blown glassware (par. 100). Protest sustained.

No. 26538.—Hairpins—Jewelry.—Protests 395689, etc., of Weaver-Jackson Hair Co. (Los Angeles).

A two-prong hairpin composed of celluloid elaborately ornamented with gold and set with imitation diamonds classified as an article of personal adornment under paragraph 448, tariff act of 1909, was claimed to be dutiable as jewelry under the same paragraph.

Sharretts, *General Appraiser:* * * * The hairpin was submitted to the Government analyst at New York, who reports that it is composed of celluloid and gold, gold chief value. The high cost of this and the other ornaments not represented by the sample indicates that they are also composed in chief value of gold. We find that all of the articles assessed with duty at 85 per cent are commonly and commercially known as jewelry, and hold that such of them as are composed in chief value of gold are dutiable at 60 per cent ad valorem, to which extent the protests are sustained.

No. 26539.—Toy Necklaces—Imitation Jet.—Protests 411132–31927, etc., and 422818–32811, etc., of Bernard, Judae & Co. et al. (Chicago). Opinions by Sharretts, G. A.

Protests sustained as to toy necklaces on the authority of G. A. 7251 (T. D. 31786), and as to imitation jet articles on the authority of United States *v.* Beierle (1 Ct. Cust. Appls., 457; T. D. 31506).

No. 26540. -Protests Overruled.—Protest 406460 of Jordan-Marsh Co., and protest 496430 of F. B. Vandegrift & Co. (Boston), protest 342036–28458 of F. B. Vandegrift & Co. (Chicago), protest 426723 of Abraham & Straus, protest 427711 of Guerin & Lavanoux, protests 495300, etc., of A. Lorsch & Co., and protest 452372 of L. Popper & Son (New York), protest 302057 of Bausch & Lomb Optical Co. (Rochester), and protest 394482 of Rosenthal-Sloan Millinery Co. (St. Louis). Opinions by Sharretts, G. A.

Protests overruled for want of merit.

No. 26541.—Protests Abandoned.—Protest 496444 of S. Ach Co. (Cincinnati). Opinion by McClelland, G. A.

Protest abandoned.

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BEFORE BOARD 2, SEPTEMBER 11, 1911.

No. 26542.—DRAWPLATES.—Protest 439556 of R. H. Hart (Denver). Opinion by Fischer, G. A.

So-called drawplates for wire drawers, forged from steel, and classified as manufactures of metal under paragraph 199, tariff act of 1909, were claimed to be dutiable as steel forgings (par. 123). Protest sustained. Note abstract 26157 (T. D. 31774).

No. 26543.—PROTESTS OVERRULED.—Protest 504845 of Butler Bros. (St. Louis), and protest 472738 of George Borgfeldt & Co. (San Francisco). Opinions by Fischer, G. A.

Protests overruled for want of merit.

No. 26544.—MALINES NETS.—Protests 490307, etc., of S. Oppenheimer & Levy (New York). Opinion by Howell, G. A.

Protests sustained as to Malines nets on the authority of Abstract 24701 (T. D. 31255).

No. 26545.—PROTESTS OVERRULED.—Protests 496879, etc., of O. Falk & Co. et al., and protests 406678, etc., of J. K. Stiefel & Co. et al. (New York), and protest 162805 of Charles H. Wyman & Co. (St. Louis). Opinions by Howell, G. A.

Protests overruled for want of merit.

No. 26546.—PROTESTS OVERRULED.—Protests 408373, etc., of John R. Ainsley & Co. (Boston), protests 404786, etc., of New York Merchandise Co. et al., and protests 328016, etc., of Schofield & Walter et al. (New York), and protests 463074, etc., of Joel Baily Davis Co. (Philadelphia). Opinions by Cooper, G. A.

Protests overruled for want of merit.

BEFORE BOARD 3, SEPTEMBER 11, 1911.

No. 26547.—HYACINTH BULBS.—Protests 418242, etc., of William Elliott & Sons et al. (New York). Opinion by Waite, G. A.

Protests sustained as to hyacinth bulbs on the authority of Breck *v.* United States (T. D. 31576).

No. 26548.—EVERGREEN SEEDLINGS.—Protests 424163, etc., of R. F. Downing & Co. (Boston). Opinion by Waite, G. A.

Merchandise classified as nursery stock under paragraph 264, tariff act of 1909, was claimed to be free of duty as evergreen seedlings (par. 668). Protests sustained.

No. 26549.—ARTISTIC ANTIQUITIES—FURNITURE—HOUSEHOLD GOODS.—Protest 445244 of Stone & Downer Co. (Boston). Opinion by Waite, G. A.

The board sustained the importers' claim that various articles of furniture and household goods were free of duty under paragraph 717, tariff act of 1909, as artistic antiquities more than 100 years old.

No. 26550.—STATUARY—SCULPTURES.—Protest 468296 of William H. Masson (Baltimore).

WAITE, *General Appraiser:* In this case a statue made of bronze and ivory has been assessed under paragraph 199, tariff act of 1909, as a manufacture in chief value of metal. It is claimed to be dutiable as sculpture under paragraph 470, or as a manufacture in chief value of ivory under paragraph 464. The statue represents a soldier in armor with flagstaff and sword, the face and hands being of ivory and the remainder of the figure bronze. It is entitled "Gloria," was produced by a French artist, and was purchased by the importer at the Paris Salon in 1910, where it was

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on exhibition. While the evidence regarding the manner of the production of this statue is not as full and satisfactory as might be desired, still we are of the opinion that the record justifies us in assuming that the method of production is the same as that of the Bellona statue, which was before the Circuit Court of Appeals in the case of United States *v.* Tiffany (160 Fed. Rep. 408; T. D. 28717), and we think its classification should be governed by the decision of the court in that case, holding the work to be statuary. On authority thereof, we sustain the protest and authorize the collector to reliquidate at 15 per cent ad valorem.

No. 26551.—PROTESTS OVERRULED.—Protests 458336–3609, etc., of Gaetano Favaloro et al. (New Orleans), protests 266590, etc., of Sun Kwong On et al. (New York), protests 306203, etc., of H. Kellogg & Sons et al., and protest 491115 of F. B. Vandegrift & Co. (Philadelphia), and protests 448655, etc., of Wilfred Schade & Co. et al. (St. Louis). Opinions by Waite, G. A.

Protests overruled for want of merit.

BEFORE BOARD 1, SEPTEMBER 13, 1911.

No. 26552.—PENKNIVES—CARPENTERS' PENCILS—ORNAMENTAL BELTS.—Protests 439478–34279, etc., of Marshall Field & Co. (Chicago).

Penknives, with silver handles and carpenters' pencils inclosed in silver or brass holders, classified as articles of personal adornment under paragraph 448, tariff act of 1909, were held dutiable as penknives (par. 152) and manufactures of metal (par. 199), as claimed by the importers. G. A. 7129 (T. D. 31089) followed. Finished ornamental belts classified as articles of personal adornment (par. 448) were claimed to be dutiable as embroidered cotton wearing apparel (par. 349). Protests overruled.

SHARRETTS, *General Appraiser:* * * * The belts are finished articles composed of leather and cotton, embroidered with tinsel wire, to which is permanently attached a brass buckle set with imitation precious stones. From an examination of the exhibit, it would seem that the buckle is of more value than either of the other materials entering into the fabrication of the belts. At any rate, there was no proof to the contrary, and, being designed to be worn for ornamental purposes, we hold they, and the other articles covered by these protests, are dutiable at 85 per cent ad valorem under paragraph 448 of the act of 1909. * * *

No. 26553.—CRUCIFIXES—MEDALS—GUN-METAL MESH BAGS AND COIN BOXES.—Protests 489786, etc., of M. H. Wiltzius Co. (Milwaukee), and protest 481614 of Massce & Co. (New York). Opinions by Sharretts, G. A.

Brass crucifixes, German silver medals, and gun-metal mesh bags and coin boxes, classified as articles of personal adornment under paragraph 448, tariff act of 1909, were claimed to be dutiable as manufactures of metal (par. 199). Protests sustained on the authority of G. A. 5828 (T. D. 25716) and G. A. 7129 (T. D. 31089).

No. 26554.—PRECIOUS STONES, CUT.—Protest 388722 of Honigbaum & Lewis (New York). Opinion by Sharretts, G. A.

Finished articles of onyx, suitable and used as settings of jewelry, classified as manufactures of onyx under paragraph 115, tariff act of 1897, were held dutiable as precious stones, cut (par. 435), on the authority of United States v. Lorsch (172 Fed. Rep., 277; T. D. 29837). Protest sustained.

No. 26555.—GLASS DISKS FOR GOGGLES.—Protest 400276 of American Thermo-Ware Co. (New York). Opinion by Sharretts, G. A.

Protests sustained as to glass disks for goggles on the authority of United States *v.* American Thermo-Ware Co. (T. D. 31571).

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No. 26556.—Silica Ware.—Protest 424727 of Eimer & Amend (New York). Opinion by Sharretts, G. A.

Tubes and other articles composed of silica and classified as manufactures of glass under paragraph 112, tariff act of 1897, were held dutiable as unenumerated manufactured articles (sec. 6). Protest sustained on the authority of G. A. 6933 (T. D. 30036).

No. 26557.—Stink Balls.—Protest 418534 of Robert B. Ways (Baltimore).

Sharretts, *General Appraiser:* This protest was submitted in behalf of the importers on the appraiser's report. That officer states that—

The articles in question are invoiced as "stink balls," and consist of small globular containers in which is found a liquid substance having a very foul odor. These containers are corked or sealed after the liquid has been placed therein, and according to directions, upon breaking them the foul odor remains for some time afterwards. These articles would hardly be given to children as playthings, inasmuch as the indiscreet use of them would probably cause annoyance to others; at the same time, if not handled carefully, they are liable to break, in which event they would probably inflict a cut about the child so using them. Following the decision in the "snowstorm" cases (T. D. 14684, G. A. 2406, and others), duty was assessed at 45 per cent ad valorem under paragraph 109 of the tariff act of 1909, which we submit is correct.

The importers claim the merchandise to be dutiable as toys, but in the absence of proof tending to show the articles are so known commercially we overrule the protest, the collector's decision being affirmed.

No. 26558.—Glass Plates—Glass Disks.—Protest 261921-24862 of G. W. Sheldon & Co. (Chicago). Opinion by Sharretts, G. A.

Unwrought glass plates or disks, rectangular in form, smaller than 8 inches in dimension, were classified under paragraph 109, tariff act of 1897, relating to lenses of glass or pebble, ground or polished, and claimed to be free of duty as glass plates or disks, unwrought (par. 565). Protest sustained on the authority of G. A. 6028 (T. D. 26336).

No. 26559.—Electric-Light Bulbs.—Protests 466296, etc., of Alfred Wolff & Co. (New York). Opinion by Sharretts, G. A.

Small fruit-shaped incandescent electric-light bulbs composed of blown glass, decorated, and metal, were classified as articles in chief value of blown glass under paragraph 98, tariff act of 1909. They were claimed to be manufactures in chief value of metal (par. 199). Protests sustained.

No. 26560.—Protests Overruled.—Protest 424545-33417 of Butler Bros., and protest 493637-37029 of G. W. Sheldon & Co. (Chicago), protest 276628 of Salim Elias (New York), and protest 431939 of William Hatteroth (San Francisco). Opinions by Sharretts, G. A.

Protests overruled for want of merit.

No. 26561.—Protests Overruled.—Protest 483335 of White, Son Co. (Boston), protest 500839 of Sinclair, Rooney & Co. (Buffalo), protest 472707-35769 of Theodore Ascher Co. et al., protest 358901-29101 of Downing, Judae & Co., and protest 358353-28871 of D. B. Fisk & Co. (Chicago), protests 496438 of S. Ach Co. (Cincinnati), protest 317934 of Hulsizer Co. (Des Moines), protest 494777 of G. H. P. Todd (Detroit), protest 501534 of M. J. Hogan (Milwaukee), protests 376343, etc., of G. J. Luz et al., and protests 368167, etc., of Morimura Bros. et al. (New York), protests 502809, etc., of Union Bag & Paper Co. et al. (Plattsburg), protest 488656 of W. White (Port Huron), and protests 469360, etc., of José G. Sanchez (San Juan). Opinions by McClelland, G. A.

Protests overruled for want of merit.

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BEFORE BOARD 2, SEPTEMBER 13, 1911.

No. 26562.—SUPERCALENDERED AND EMBOSSED GREASE-PROOF PAPER.—Protests 489754–35588, etc., of Gallagher & Ascher (Chicago). Opinion by Fischer, G. A.

Protests sustained as to supercalendered and embossed grease-proof paper on the authority of G. A. 7136 (T. D. 31133).

No. 26563.—BRONZE STATUARY—CAST HOLLOW WARE.—Protests 471862–36171, etc., of Sears, Roebuck & Co. (Chicago).

FISCHER, *General Appraiser:* The articles here in question are invoiced as "metal figures," and are pieces of imitation bronze statuary of a size suitable for mantel or cabinet ornaments. The figures are made of a metal composition or spelter, are cast from molds, and are stained or painted in imitation of bronze.

Duty was assessed on said metal figures at the rate of 45 per cent ad valorem under the provisions of paragraph 199, tariff act of 1909, as manufactures of metal, and they are claimed dutiable at 1½ cents per pound under paragraph 149 as cast hollow ware. * * *

The testimony at the hearing was confined to proving the sample which is in evidence. It is manifest from an examination of the said sample that metal figures of the kind in question are not classifiable under the provision in the tariff for "hollow ware." The use of the words "hollow ware" by Congress in paragraph 149, act of 1909, was no doubt with the same understanding of that term as defined under prior acts. Note ruling in G. A. 6722 (T. D. 28795). The meaning of the same provision as found in the prior acts has been understood as restricted to cast-iron utensils, such as kitchen ware, and considered in that light it is evident that a metal figure or piece of statuary would not be implied by, or included in, the provision for "cast hollow ware" as found in paragraph 149, tariff act of 1909. We so hold. * * *

The protests are in all respects overruled and the decisions of the collector therein affirmed.

No. 26564.—PROTESTS OVERRULED.—Protest 480526 of B. Illfelder & Co. (Philadelphia). Opinion by Fischer, G. A.

Protest overruled for want of merit.

No. 26565.—MALINES NETS.—Protests 484841, etc., of S. Oppenheimer & Levy (New York). Opinion by Howell, G. A.

Protests sustained as to Malines nets on the authority of Abstract 24701 (T. D. 31255).

No. 26566.—COTTON BANDAGES.—Protest 468510 of Surgical Supply Importing Co. (New York).

COOPER, *General Appraiser:* The merchandise covered by this protest, invoiced as "Ideal bandages," was reported by the appraiser to consist of cotton bandages, and duty was accordingly collected thereon at the rate of 45 per cent ad valorem under paragraph 332, tariff act of 1909, relating to manufactures of cotton and articles made from cotton cloth. Claims for lower rates of duty are made under paragraphs 315 to 320 (countable cotton cloth), paragraph 65 (medicinal preparations), and paragraph 331 (cotton table damask).

The merchandise, as shown by the testimony and samples, consists of so-called bandages varying in width, one of the samples being about 2 inches wide and the other 8 inches, and 5½ yards long. They are used for various purposes in the nature of surgical dressings.

These narrow strips of cotton cloth do not fall within the definition of cotton cloth as given in paragraph 320 of the act of 1909, "all woven fabrics of cotton in the piece or cut in lengths."

There is no evidence before us to sustain the claims under the other paragraphs mentioned.

The protest is therefore overruled.

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No. 26567.—Drawnwork.—Protest 420358 of G. Saito (New York). Opinion by Cooper, G. A.

Certain drawnwork articles classified under paragraph 339, tariff act of 1897, relating to imitation lace and embroideries were claimed to be dutiable as flax articles, according to weight and count (par. 346). Protest sustained. Note G. A. 6993 (T. D. 30442).

Before Board 3, September 13, 1911.

No. 26568.—Hyacinth Bulbs.—Protests 418674, etc., of William Hagemann & Co. (New York). Opinion by Waite, G. A.

Protests sustained as to hyacinth bulbs on the authority of Breck *v.* United States (T. D. 31576).

No. 26569.—Dried Pease.—Protest 488658 of W. White (Port Huron). Opinion by Waite, G. A.

An importation of dried pease classified under paragraph 262, tariff act of 1909, as seed pease, was claimed to be dutiable as "pease, dried, not specially provided for" under the same paragraph. Protest sustained.

No. 26570.—Artistic Antiquities—Card Table—Furniture.—Protest 500837 of Morris European & American Express Co. (Boston), and protest 476270 of Lloyd Williams (New York). Opinions by Waite, G. A.

A card table, an oak table, a settee, and three chairs classified under paragraph 215, tariff act of 1909, as furniture of wood, were claimed to be free of duty as artistic antiquities (par. 717). Protests sustained.

No. 26571.—Nori.—Protests 470015, etc., of M. Furuya Co. et al. (Port Townsend). Opinion by Waite, G. A.

The board sustained the importers' claim that nori dried in sheets was free of duty as a crude seaweed under paragraph 630, tariff act of 1909. United States *v.* Furuya (176 Fed. Rep., 480; T. D. 30316) followed.

No. 26572.—Lily Flowers.—Protests 476948, etc., of M. Hachiya Co. et al. (Portland, Oreg.). Opinion by Waite, G. A.

Dried lily flowers classified as "vegetables, if cut, sliced, or otherwise reduced in size" under paragraph 252, tariff act of 1909, were claimed to be dutiable as vegetables in their natural state (par. 269). Protests sustained in part.

No. 26573.—Konniyakuko Flour.—Protest 482806 of North American Mercantile Co. (San Francisco). Opinion by Waite, G. A.

Konniyakuko flour classified under paragraph 252, tariff act of 1909, as vegetable reduced in size, was claimed to be dutiable as an unenumerated manufactured article (par. 480). Protest sustained on the authority of Abstract 25277 (T. D. 31478).

No. 26574.—Currency—Turkish Goods Invoiced in Francs.—Protest 483276–35391 of Mandel Bros. (Chicago). Opinion by Waite, G. A.

The merchandise in question was invoiced in francs and the total of the invoice was given in piasters. In converting this into United States money the collector used the franc value and the importers claimed he should have used the piaster value. Protest sustained on the authority of Abstract 23259 (T. D. 30601).

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No. 26575.—PROTESTS OVERRULED.—Protests 442682-34606, etc., of Wakem & McLaughlin et al. (Chicago), protest 386556 of Butler Bros. Construction Co., and protest 471551 of Mrs. G. L. Peacock (Detroit), protests 451934, etc., of B. Izzo et al., and protests 475137, etc., of Reiss & Brady (New York), protest 473467 of Charles E. Boyce (Port Huron), protests 472733, etc., of R. D. Merrill et al. (Port Townsend), protest 393091 of C. H. Jarboe (St. Paul), and protests 493724, etc., of Fook On Lung et al., protest 469423 of N. Kamaguchi, protests 486706, etc., of Shing Shun & Co., protests 495262, etc., of Tung Yick Jan & Co. et al., protest 472770 of Wah Chong Shing Co., and protest 475215 of M. D. Vanvales (San Francisco). Opinions by Waite, G. A.

Protests overruled for want of merit.

No. 26576.—PROTESTS OVERRULED.—Protests 485201, etc., of O. F. Maniscalca (Philadelphia). Opinion by Somerville, G. A.

Protests overruled for want of merit.

No. 26577.—POWDERED TALC.—Protests 448933, etc., of F. A. Reichard (New York). Opinion by Hay, G. A.

Protests sustained as to powdered talc on the authority of Salomon *v.* United States (T. D. 31635).

No. 26578.—TOY FANS.—Protest 499020 of A. A. Vantine & Co. (New York). Opinion by Hay, G. A.

Protest sustained as to toy fans on the authority of Morimura *v.* United States (175 Fed. Rep., 887; T. D. 30129).

No. 26579.—PROTESTS OVERRULED.—Protest 420665 of A. Lubarsky (New York), and protests 289482, etc., of O. G. Hempstead & Son (Philadelphia). Opinions by Hay, G. A.

Protests overruled for want of merit.

BEFORE BOARD 1, SEPTEMBER 14, 1911.

No. 26580.—CINEMATOGRAPH FILMS.—Protests 413639, etc., of American Express Co. et al. (New York). Opinion by Sharretts, G. A.

Protests sustained as to cinematograph films on the authority of United States *v.* Sussfeld (1 Ct. Cust. Appls., 51; T. D. 31030).

No. 26581.—JEWELRY—CORAL NECKLACES.—Protest 344714 of Maloof & Dowaliby (New York).

SHARRETTS, *General Appraiser:* The merchandise covered by this protest is pieces of branch coral of irregular diameter and length, strung on cotton threads severally joined at the ends with a cheap brass clasp. The articles were returned by the appraiser as jewelry, and the same were assessed with duty at the rate of 60 per cent ad valorem under paragraph 434 of the tariff act of 1897. In G. A. 6584 (T. D. 28131) this board held that all varieties of coral suitable for use in the construction of jewelry, including branch corals strung on cotton threads, were dutiable at the rate of 10 per cent ad valorem under paragraph 435 of the tariff act of 1897. In harmony with that decision, we hold that a complete necklace composed of precious stones (coral) fitted with a clasp is jewelry, regardless of whether the metal clasp is composed of precious or base metal. We accordingly overrule the claim in the protest that the merchandise is dutiable as manufactures of coral at 50 per cent ad valorem under paragraph 115 of the act of 1897. The collector's decision is affirmed.

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No. 26582.—Cut-Paste Articles—Imitation Precious Stones.—Protests 451898, etc., of Guthman, Solomons & Co. et al., and protest 416054 of Judkins & McCormick Co. (New York). Opinions by Sharretts, G. A.

Protests sustained as to cut-paste articles on the authority of G. A. 6995 (T. D. 30444). The board sustained a further claim that imitation precious stones made in a paste form and over 1 inch in dimensions, classified as manufactures of paste under paragraph 109, tariff act of 1909, were dutiable as imitation precious stones (par. 449).

No. 26583.—Silica Ware.—Protests 321413-27788, etc., of G. W. Sheldon & Co. (Chicago). Opinion by Sharretts, G. A.

Mufflers and tubes composed of silica, classified as manufactures of glass under paragraph 112, tariff act of 1897, were held dutiable as unenumerated manufactured articles (sec. 6), as claimed by the importers.

No. 26584.—Rosaries.—Protests 229763, etc., of R. F. Downing & Co. et al. (New York), and protest 390360 of C. D. Bunker & Co. (San Francisco). Opinions by Sharretts, G. A.

Protests sustained as to rosaries on the authority of G. A. 7053 (T. D. 30731).

No. 26585.—Cylinder Glass.—Protest 485486 of Leo Popper & Sons (New York). Opinion by Sharretts, G. A.

Cylinder glass was held to have been improperly subjected to the additional duty under paragraph 104, tariff act of 1909, for glass colored or obscured. Protest sustained.

No. 26586.—Toy Necklaces.—Protest 406712 of Strauss Bros. & Co. (New York). Opinion by Sharretts, G. A.

Protest sustained as to toy necklaces on the authority of G. A. 6868 (T. D. 29558).

No. 26587.—Cigarette Cases—Smokers' Articles.—Protest 439913 of C. A. Clark (New York). Opinion by Sharretts, G. A.

Gun-metal cigarette cases classified as articles of personal adornment under paragraph 448, tariff act of 1909, were held dutiable as smokers' articles (par. 475), as claimed by the importers. G. A, 7102 (T. D. 30942) followed.

No. 26588.—Hatpins.—Protest 451352 of P. C. Kuyper & Co. (New York). Opinion by Sharretts, G. A.

Hatpins inadvertently classified as jewelry under paragraph 448, tariff act of 1909, were held dutiable as manufactures of paste (par. 109) and metal (par. 199). Protest sustained.

No. 26589.—Metal Belt Buckles.—Protests 247854, etc., of Mark Cross Co. (New York). Opinion by Sharretts, G. A.

Merchandise reported by the appraiser to be gilt buckles ornamented with polished steel points and classified under paragraph 434, tariff act of 1897, as jewelry, was claimed to be dutiable as manufactures of metal (par. 193). Protests sustained, the appraiser admitting error.

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No. 26590.—Protests Overruled.—Protests 292350, etc., of George Borgfeldt & Co. (Baltimore), protest 303593 of George Borgfeldt & Co. (Boston), protest 302002-26929 of Downing, Judae & Co. (Chicago), protest 386254 of D. Baird & Son (Louisville), protests 303082-3049, etc., of George Borgfeldt & Co. (New Orleans), protests 291579, etc., of George Borgfeldt & Co. (Newport News), protests 473302, etc., of S. Stern (New York), protests 291754, etc., of George Borgfeldt & Co., and protest 465709 of Harrington & Goodman (Philadelphia), and protests 234783, etc., of Stix, Baer & Fuller Dry Goods Co. (St. Louis). Opinions by Sharretts, G. A.

Protests overruled for want of merit.

No. 26591.—Protests Overruled.—Protests 414186, etc., of William H. Masson, and protest 423888 of Arthur W. Robson (Baltimore), and protests 430653, etc., of Basket Importing Co., protest 496177 of George E. Evans Co., protests 431126, etc., of Spingarn Bros. et al., and protests 420020, etc., of A. L. Tuska, Son & Co. et al. (New York). Opinions by McClelland, G. A.

Protests overruled for want of merit.

Before Board 2, September 14, 1911.

No. 26592.—Rough-Trimmed Mica.—Protests 499756, etc., of General Electric Co. (Albany). Opinion by Fischer, G. A.

Protests sustained as to rough-trimmed mica on the authority of United States *v.* Myers (1 Ct. Cust. Appls., 257; T. D. 31301).

No. 26593.—Post Cards—Printed Matter.—Protests 488927-34878, etc., of Kawin & Co. et al. (Chicago), and protests 312577, etc., of Henry Bischoff & Co. et al. (New York). Opinions by Fischer, G. A.

Protests sustained as to post cards on the authority of Ringk *v.* United States (164 Fed. Rep., 1021; T. D. 29037), United States *v.* Deutsch (178 Fed. Rep., 272; T. D. 30387), Rotograph *v.* United States (1 Ct. Cust. Appls., 82; T. D. 31106), and Abstract 24233 (T. D. 31070).

No. 26594.—Wall Pockets.—Protests 191488, etc., of M. & A. Bachert et al. (New York). Opinion by Fischer, G. A.

Protests sustained as to wall pockets on the authority of Knauth *v.* United States (1 Ct. Cust. Appls., 422; T. D. 31499).

No. 26595.—Cylindrical Metal Containers.—Protests 400580, etc., of J. L. & D. S. Riker et al. (Baltimore), protests 403786, etc., of J. R. Marble & Co. et al. (Boston), protests 425250-3567, etc., of Illinois Central Railroad Co. et al. (New Orleans), protests 401051, etc., of T. G. Cooper & Co. et al. (Philadelphia), and protests 425997, etc., of C. H. Wyman & Co. (St. Louis). Opinions by Fischer, G. A.

Round tins and cylindrical sheet-metal coverings or drums containing bleaching powder, chloride of lime, caustic soda, caustic potash, permanganate of potash, and carbolic-acid crystals, classified as cylindrical or tubular vessels under paragraph 151, tariff act of 1909, were held free of duty as the usual containers of free merchandise or dutiable at the rate applicable to their contents. Protests sustained on the authority of United States *v.* Garramone (T. D. 31577), United States *v.* Braun (T. D. 31596), and Abstract 26116 (T. D. 31757).

No. 26596.—Drawplates—Wortles—Forgings.—Protests 459537, etc., of George Nash Co. et al. (New York). Opinion by Fischer, G. A.

Protests sustained as to drawplates and wortles imported under the act of 1909, on the authority of Newman-Andrew *v.* United States (T. D. 31570), and Abstract 26157 (T. D. 31774).

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No. 26597.—Protests Overruled.—Protests 426306, etc., of Read, Holliday & Sons (Boston), protests 394059–30777, etc., of William F. Jobbins et al. (Chicago), protests 471160, etc., of John L. Vandiver et al. (Philadelphia), protests 474278, etc., of C. H. Wyman & Co. (St. Louis), and protests 390355, etc., of John H. Boden & Co. et al. (San Francisco). Opinions by Fischer, G. A.

Protests overruled for want of merit.

No. 26598.—Cotton Cloth—Cotton Yarn.—Protests 466891 of Cayron & Werdam, and protest 515786 of Knauth, Nachod & Kuhne (New York). Opinions by Cooper, G. A.

The importers claim that certain cotton cloth and cotton yarn were improperly subjected to the additional duty provided under paragraphs 313 and 323, tariff act of 1909, for such goods when mercerized. Protests sustained.

No. 26599.—Cotton Gloves.—Protests 455382, etc., of S. M. Hohl (New York). Opinion by Cooper, G. A.

Gloves classified under paragraph 328, tariff act of 1909, as men's cotton gloves were found to be women's gloves and held dutiable as wearing apparel (par. 324), as claimed by the importer.

No. 26600.—Flax Articles.—Protest 452189 of Syndicate Trading Co. (New York). Opinion by Cooper, G. A.

Certain flax fabrics and articles inadvertently classified as embroideries under paragraph 349, tariff act of 1909, were held dutiable as flax articles (par. 357). Protest sustained.

No. 26601.—Scalloped Articles.—Protest 199157–21117 of Marshall Field & Co. (Chicago), and protests 388269, etc., of Abraham & Straus, and protest 396255 of W. B. Quaintance (New York). Opinions by Cooper, G. A.

Protests sustained as to scalloped articles on the authority of United States *v.* Waentig (168 Fed. Rep., 570; T. D. 29598) and G. A. 6966 (T. D. 30271).

No. 26602.—Colored Cotton Cloth.—Protest 428874 of A. & H. Veith (New York). Opinion by Cooper, G. A.

Colored cotton cloth returned for duty under paragraph 322, tariff act of 1897, as manufactures of cotton, was held dutiable as cotton cloth (par. 305). Protest sustained, the appraiser admitting error.

No. 26603.—Unbleached Cotton Cloth.—Protests 327418, etc., of C. Bahnsen & Co. (New York). Opinion by Cooper, G. A.

Cotton cloth assessed as colored was held dutiable as unbleached. Protests 327418 and 327420 sustained in part.

No. 26604.—Protests Overruled.—Protests 458329, etc , of John R. Ainsley & Co (Boston), protests 469038–36035, etc., of Bernard, Judae & Co. (Chicago), protest 476882 of Sell Horse Goods Co. (Cleveland), protests 411622, etc., of B. Altman & Co. et al., protest 451272 of Henry Glass & Co., protests 392278, etc., of Naday & Fleischer, and protest 429180, of Stroheim and Romann (New York), and protests 445990, etc., of Alexander Murphy & Co. (Philadelphia). Opinions by Cooper, G. A.

Protests overruled for want of merit.

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BEFORE BOARD 1, SEPTEMBER 16, 1911.

No. 26605.—CINEMATOGRAPH FILMS.—Protest 393330 of Lorenzo Lucarelli (New York). Opinion by Sharretts, G. A.

Protests sustained as to cinematograph films on the authority of United States *v.* Sussfeld (1 Ct. Cust. Appls., 51; T. D. 31030).

No. 26606.—IMITATION JET.—Protests 412800-31559, etc., of Charles D. Stone & Co. (Chicago). Opinion by Sharretts, G. A.

Protests sustained as to imitation jet articles on the authority of United States *v.* Beierle (1 Ct. Cust. Appls., 457; T. D. 31506).

No. 26607.—SILK BELTS—ARTICLES OF PERSONAL ADORNMENT.—Protest 462824 of R. H. Macy & Co. (New York). Opinion by Sharretts, G. A.

Belts composed of silk and finished with brass buckles, silk being the component material of chief value in the completed articles, which were classified as articles of personal adornment under paragraph 448, tariff act of 1909, were claimed to be dutiable as silk wearing apparel (par. 402). Protest sustained.

No. 26608.—IMITATION PEARL-BEAD NECKLACES.—Protest 493661-36747 of G. W. Sheldon & Co. (Chicago). Opinion by Sharretts, G. A.

Imitation pearl-bead necklaces costing 7 cents each and classified as articles in chief value of beads under paragraph 421, tariff act of 1909, were claimed to be dutiable as manufactures of wax (par. 462). Protest overruled.

No. 26609.—PROTESTS OVERRULED.—Protests 251774, etc., of L. Heuman & Sons (New York). Opinion by Sharretts, G. A.

Protests overruled for want of merit.

No. 26610.—PROTESTS OVERRULED.—Protest 399183 of Hommel Co. (New York). Opinion by McClelland, G. A.

Protest overruled for want of merit.

BEFORE BOARD 2, SEPTEMBER 16, 1911.

No. 26611.—WINDOW PAPER—DECORATED PAPER.—Protest 443647 of F. B. Vandegrift & Co. (New York).

FISCHER, *General Appraiser:* The merchandise here in question consists of a paper, uncoated, and printed with a design in imitation of stained glass effect. Duty was assessed thereon at the rate of 25 per cent ad valorem under the provisions of paragraph 415, tariff act of 1909, as "paper hangings" wholly or in chief value of paper. The importers contend that such classification is erroneous, inasmuch as the merchandise is entirely different in character and use from that of wall paper, and the rate relied on in their protest is that at 4½ cents per pound under paragraph 411 of said act, under the provision reading:

Papers, including wrapping paper, with the surface decorated or covered with a design, fancy effect, pattern or character, whether produced in the pulp or otherwise, but not by lithographic process.

It appears that this uncoated paper, having a surface design, fancy effect, or pattern, would be dutiable under the above provision, as claimed, if not specially provided for as "paper hangings." This paper is intended for use in the manufacture of finished window paper used in decorating glass or windows. The special report of the local appraiser so far as it relates to the use of the imported paper is as follows:

It [the paper] is to be subjected to a further process of manufacture in order to make it transparent and adhesive, and when finished it is to be used as a paper hanging for windows.

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The record in the case satisfies us that the paper in the form in which it is here imported is not a wall hanging, and we hold that it was error to so classify it. We sustain the claim at 4½ cents per pound under paragraph 411, and modify the decision of the collector to that extent. In all other respects the protest is overruled.

No. 26612.—Cigarette Machinery Belting.—Protests 451521, etc., of Edwin Horrax (New York). Opinion by Fischer, G. A.

Protests sustained as to belting on the authority of United States *v.* Horrax (1 Ct. Cust. Appls., 142; T. D. 31187).

No. 26613.—Sewing Machine Heads.—Protests 383648, etc., of Hirth-Krause Co. (Grand Rapids).

Fischer, *General Appraiser:* The goods here in question, so-called "sewing-machine heads" for use in the manufacture of shoes, were classified as manufactures of metal and assessed with duty at 45 per cent ad valorem under the provisions of paragraph 199, tariff act of 1909, and are claimed dutiable as sewing machines at 30 per cent ad valorem under paragraph 197 of said act.

Protests 383648–51, 388376: These cases were decided by the board June 8, 1910, and the claim of the importers sustained. Abstract 23473 (T. D. 30691). The issue as presented before the board at that time turned on whether these "heads" were sewing machines or merely "parts" of machines.

The Government obtained a rehearing in said cases, and it was the purpose no doubt to show that the machines were not the sewing machines provided for under paragraph 197, tariff act of 1909.

Protests 420408, 431239–431240, 476627: These cases are before us for the first time, and involve goods of the same descriptions as those above referred to.

The record in these cases now before us for decision presents no new facts, and in determining the issue again presented we arrive at a conclusion no different than that expressed in Abstract 23473 (T. D. 30691). We hold the so-called "sewing-machine heads" classifiable under paragraph 197, as claimed.

The machines are practically complete and require only to be connected with a motor or other power agent to be availed of. They are in our opinion "machines," and not parts of machines. They are used to fasten leather together and perform that work by a sewing arrangement using a thread. Within the meaning of the term "sewing machine" as laid down by the board in G. A. 7225 (T. D. 31623) these "sewing-machine heads" fall, and we sustain the claim in the protests that they are dutiable at 30 per cent ad valorem under paragraph 197. The decisions of the collector are modified accordingly.

No. 26614.—Wrapping Paper.—Protest 472730 of Guy B. Barham (Los Angeles). Opinion by Fischer, G. A.

Merchandise invoiced as "Plate" wrapping paper and classified under paragraph 413, tariff act of 1909, as onionskin paper was held dutiable as wrapping paper not specially provided for (par. 415), as claimed by the importer.

No. 26615.—Combination Knife and Letter Opener.—Protests 431381, etc., of A. L. Silberstein (New York).

Fischer, *General Appraiser:* The merchandise consists of metal articles in the form of a letter opener and knife combined. Duty was assessed on the goods at the rate of 1 cent each and 40 per cent ad valorem under the provision in paragraph 152, tariff act of 1909, for "knives, by whatever name known, including such as are denominatively mentioned in this section, which have folding or other than fixed blades or attachments." It is claimed that the articles are dutiable at 45 per cent ad valorem under paragraph 199 of said act as manufactures of metal not specially provided for.

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The metal article, as represented by the exhibits, is a combination one with handle in the form of a knife with folding blade and a fixed attachment in the form of a letter opener. The importers say it is a letter opener with a knife attachment; the Government that it is a knife with a letter-opener attachment. It is fair to regard the article as a desk knife and letter opener. It is a combination article. The provision for "all knives by whatever name known," paragraph 152, must cover the goods here before us, for the wording refers to such as have "other than fixed blades or attachments." We regard the said provision as embracing all knives with folding blades whether or not they are likewise supplied with fixed blades or attachments. That is, the provision would exclude such as have only fixed blades or attachments, but includes such as have "other" than fixed blades or attachments. We affirm the collector's assessments herein and overrule the protests.

No. 26616.—Steel Pattern Rolls—Dies.—Protest 492368 of Alfred de Liagre (New York).

Fischer, *General Appraiser:* The merchandise consists of steel pattern rolls or dies, upon which duty was assessed at the rate of 45 per cent ad valorem under the provisions of paragraph 199, tariff act of 1909, as manufactures of metal not specially provided for and which are claimed to be dutiable properly under paragraph 166 of said act as "plates" engraved for printing.

The articles are of steel, cylindrical in form, and used for the purpose of sinking patterns on copper rollers for producing printed effects on calico. The pattern for printing has been cut on the steel rolls or dies, and these act as models or patterns from which the copper rollers for printing are made. We believe it clear that the importer's claim is untenable. The pattern rolls or dies are not plates engraved for printing. Note ruling in Abstract 16083 (T. D. 28300). The protest is overruled and the decision of the collector affirmed.

No. 26617.—Protests Overruled.—Protests 497708, etc., of Baum, Cohen & Shire, protest 482275 of B. Illfelder & Co., protest 489083 of G. Mandelbaum, and protests 446999, etc., of Robert Reiner et al. (New York). Opinions by Fischer, G. A.

Protests overruled for want of merit.

No. 26618.—Scalloped Nottingham Pillow Shams.—Protests 411147-31979 of John V. Farwell Co. (Chicago).

Cotton pillow shams made on a Nottingham lace machine and having scalloped edges classified as scalloped articles under paragraph 349, tariff act of 1909, were claimed to be dutiable as "pillow shams * * * made on the Nottingham lace-curtain machine" (par. 351). Protest sustained.

Cooper, *General Appraiser:* * * * The *eo nomine* provision in paragraph 351, above quoted, is more specific than the provision in paragraph 349 for scalloped articles. The articles are therefore properly dutiable at the applicable rate under paragraph 351. * * *

No. 26619.—Cotton Bands—Bandages.—Protests 453486, etc., of Seabury & Johnson et al. (New York).

Cooper, *General Appraiser:* These protests are against the collection of duty at the rate of 60 per cent ad valorem under paragraph 349, tariff act of 1909. From the record it appears that the merchandise covered by protest 465346 was assessed for duty at the rate of 45 per cent ad valorem under paragraph 332 of said act. The protestants contend that the following provisions of the law should control the classification of the goods in question: "All other medicinal preparations" (par. 65); "articles made from cotton cloth or manufactures of cotton" (par. 332); countable cotton cloth (pars. 315 to 320).

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The merchandise was returned by the appraiser as cotton gauze, ribbons or bands, and cotton bandages. That covered by protests 453486 and 461474 consists of narrow pieces of cotton gauze, varying in width, the 3 samples being ½, 1, and 2 inches wide, respectively, imported in rolls of different lengths. After importation these strips of gauze are sterilized or medicated, cut in suitable lengths, and used for packing wounds, as gauze packing. The merchandise covered by protest 465346, as shown by the sample submitted (Exhibit 4), consists of strips of cotton cloth about 2½ inches wide, imported in rolls, each roll containing a strip of cloth about 5 yards long. These articles are used for bandages and are similar to the merchandise passed upon by the board in protest 468510.

The claim that these articles are dutiable as countable cotton cloth can not be sustained, as it seems clear that they do not answer to the description of cotton cloth as given in paragraph 320, "all woven fabrics of cotton in the piece or cut in lengths."

If these articles are bands or bandings, the fact that they are not ornamental and are not *ejusdem generis* with the other goods mentioned in paragraph 349 does not exclude them from that paragraph, in view of the decision of the Court of Customs Appeals in the case of Burlington Venetian Blind Co. *v.* United States (1 Ct. Cust. Appls., 374; T. D. 31456) and the decision of the board in G. A. 7206 (T. D. 31495). In harmony with the principle laid down in these decisions, the provision for "bands or bandings" would include all bands or bandings, whether or not they are ornamental or designed for use on articles of wearing apparel.

The popular and general meaning of the term "band" is a narrow strip of any material, and these articles fall within that description. It is not clear just what articles would be included in the provision for bands or bandings, and the testimony does not aid us in this respect. There is not evidence before us to prove that they are not bands.

There is no evidence tending to show that they are medicinal preparations as provided for in paragraph 65.

The protests are therefore overruled.

BEFORE BOARD 3, SEPTEMBER 16, 1911.

No. 26620.—PROTESTS OVERRULED.—Protest 471544 of Thomas Harrington (Detroit). Opinion by Waite, G. A.

Protest overruled for want of merit.

(T. D. 31867.)

Iron sand, grit, or shot.

Application for a rehearing of the decision of the Board of United States General Appraisers of July 22, 1911, G. A. 7249 (T. D. 31773), involving the classification of so-called iron sand, grit, or shot.

TREASURY DEPARTMENT, *September 18, 1911.*

SIR: The department is in receipt of your letter of the 16th instant, in which you invite attention to the decision of the Board of United States General Appraisers of July 22, 1911, G. A. 7249 (T. D. 31773), involving the classification of so-called iron sand, grit, or shot.

In view of your statements you are requested to file with the board an application for a rehearing in this case.

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Pending the final determination of this case and other protests involving similar issues, the existing practice of assessing the merchandise in question with duty under the provisions of paragraph 133 of the existing tariff act of August 5, 1909, will be continued.

Respectfully, JAMES F. CURTIS,
(72880.) *Assistant Secretary.*

Mr. WM. L. WEMPLE,
Assistant Attorney General, New York.

(T. D. 31868.)

Artificially colored or faced teas not entitled to admission.

TREASURY DEPARTMENT, *September 19, 1911.*

To collectors of customs and others concerned:

It has come to the attention of the department that certain of the samples deposited in the customhouses of the country in accordance with the provisions of section 3 of the act of March 2, 1897, known as the tea act, which purport to represent the standards established by Department Circular No. 17 of March 1, 1911, do not accurately represent those standards thus established in so far as they contain a slight amount of artificial coloring or facing matter. The department has obtained the opinion of the Solicitor of the Treasury upon the question whether or not the variation of certain of the samples from the standards established by the circular is a legal bar to the enforcement of the proper standards as publicly announced. To this inquiry the solicitor has replied that the standards announced in the circular of March 1, 1911, control, irrespective of the fact that a few of the samples purporting to represent those standards contain artificial coloring or facing matter. Consequently no teas shipped from abroad after May 1, 1911, which contain any artificial coloring or facing matter will be permitted entry into this country. Officers of the customs will be governed accordingly.

The solicitor's opinion is given below.

JAMES F. CURTIS, *Assistant Secretary.*

DEPARTMENT OF JUSTICE,
OFFICE OF THE SOLICITOR OF THE TREASURY,
Washington, September 12, 1911.

SIR: Your telegram received by your private secretary this morning, which has been delivered to me, recites as follows:

Get immediately opinion of solicitor whether or not the tea standards must be observed if these prove to be colored notwithstanding the clear intent to have them uncolored, and the adequate notice and publicity given the real intention by the department. * * *

Section 2 of an act entitled "An act to prevent the importation of impure and unwholesome tea," approved March 2, 1897, directs the Secretary of the Treasury

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to appoint a board to consist of seven members, experts in teas, whose duty it shall be to prepare and submit to the Secretary of the Treasury standard samples of tea.

Section 3 of the same act provides that the Secretary, upon the recommendation of said board, shall fix and establish uniform standards of purity, quality, and fitness for consumption of all kinds of teas imported into the United States, and shall procure and deposit in the customhouses of the ports of New York, Chicago, San Francisco, and such other ports as he may determine, duplicate samples of such standards; and shall procure a sufficient number of other duplicate samples of such standards to supply the importers and dealers in tea at all other ports desiring the same at cost; and that all teas, or merchandise described as tea, of inferior purity, quality, and fitness for consumption to such standards shall be prohibited from entry.

From the language of your telegram it might appear that samples of teas recommended as standards by the tea board possessed artificial coloring, either known or unknown to such board. But whether artificial coloring in the samples of tea were known or unknown to the board is immaterial to the present inquiry. If samples of teas recommended by the tea board to you as standards were known by the tea board to contain artificial coloring, it is quite clear from Department Circular No. 17, of 1911, that any standards recommended by the board which may have included artificial coloring did not receive your approval, for the reason that the decision or circular in relation thereto, among other things, recites as follows:

> The standards recommended by the board of tea experts and fixed and established by me in regulation 19 of the appended regulations as the legal standards for the year 1911 are in every instance teas entirely free from artificial coloring or facing matter.

Thus, I take it that the standards actually established for the year 1911 in pursuance of the act above referred to were the standards recommended by the board, modified, so far as the artificial coloring is concerned, by the act of the department of March 1, 1911.

I am of the opinion that the recommendations of the tea board were advisory in character, and that the Secretary of the Treasury had the right to modify and adopt the same so modified as he might consider consistent and in accordance with the intent and meaning of the act of Congress above referred to, and that the standards recommended by the tea board, so modified and adopted as indicated by the langauge of the circular above quoted, constitute the standards to be observed relative to the importation of teas for the year 1911, and that any samples of such standards as may have been furnished importers or others interested would necessarily have to be considered in connection with the order made by the Secretary of the Treasury in establishing standards. Such order of approval and adoption of standards in pursuance of the act of Congress imparted notice to the world in the same manner and to the same extent as the statute on that subject imparted public notice, that it was the clear intention of the department, indicated by the order of adoption, that no artificially colored teas should be imported into the United States after May 1, 1911. This intent is further evidenced by T. D. 31367, made in pursuance of the act of March 2, 1897. This decision of the department bears date of March 10, 1911, and provides *inter alia* as follows:

> Teas shipped from abroad after May 1, 1911, will not be allowed entry if they contain any artificial coloring matter at all.

From the foregoing it may be reasonably concluded—

First, that the standards of teas subject to importation fixed by the department were such as had been recommended by the tea board, but containing no artificial coloring;

Second, that the samples furnished, whether possessing artificial coloring or not, were to be taken and considered in connection with the regulations promulgated adopting the standards, which specifically provided that no artificially colored tea could be lawfully imported into the United States; and

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Third, that importers can not be heard to urge the existence of samples containing coloring matter misrepresenting standards actually adopted as authority for importing artificially colored teas;

Fourth, that samples must yield to standards and not standards to samples, or false representatives of standards, especially when the public rules and regulations of the department, of which importers will be presumed to have knowledge, clearly indicate what the legal standards are.

Very respectfully, W. T. THOMPSON, *Solicitor.*

The SECRETARY OF THE TREASURY.

(T. D. 31869.)

Cotton yarn.

Appeal directed from decision of the Board of United States General Appraisers of July 26, 1911, Abstract 26216 (T. D. 31788), involving the classification of cotton yarn.

TREASURY DEPARTMENT, *September 19, 1911.*

SIR: The department is in receipt of your letter of the 18th instant in which you invite attention to the decision of the Board of United States General Appraisers of July 26, 1911, Abstract 26216 (T. D. 31788), wherein it is held that certain merchandise which was assessed with duty as "imitation" horsehair under paragraph 405 of the tariff act of 1909, was properly dutiable as cotton yarn under paragraph 313 of the said act.

As the issue is an important one, you are requested to file, in the name of the Secretary of the Treasury, an application with the United States Court of Customs Appeals for a review of the said decision, in accordance with the provisions of subsection 29 of section 28 of the said tariff act.

Respectfully, JAMES F. CURTIS,
(91291.) *Assistant Secretary.*

Mr. WM. L. WEMPLE,
Assistant Attorney General, New York.

(T. D. 31870.)

Allowance for damaged macaroni.

Appeal directed from the decision of the Board of United States General Appraisers, July 25, 1911, Abstract 26203 (T. D. 31788), holding that an allowance should be made on decayed or damaged macaroni under the decision of the Supreme Court in the case of Lawder *v.* Stone (187 U. S., 281).

TREASURY DEPARTMENT, *September 19, 1911.*

SIR: The department is in receipt of your letter of the 7th instant, relative to the decision of the Board of United States General Appraisers of July 25, 1911, Abstract No. 26203 (T. D. 31788), wherein it is held that an allowance should be made on macaroni, portions of which arrived at Boston in a decayed or damaged con-

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dition, following the decision of the Supreme Court in the case of Lawder *v.* Stone (187 U. S., 281.)

In view of the importance of the issue, you are hereby requested to file, in the name of the Secretary of the Treasury, an application with the United States Court of Customs Appeals for a review of the said decision, in accordance with the provisions of subsection 29 of section 28 of the tariff act of August 5, 1909.

Respectfully, JAMES F. CURTIS,
(73812.) *Assistant Secretary.*

Mr. WM. L. WEMPLE,
Assistant Attorney General, New York.

(T. D. 31871.)

Exhausters and pumps.

Appeal directed from decision of the Board of United States General Appraisers of August 24, 1911, Abstract 26422 (T. D. 31842), involving the classification of certain exhausters and pumps.

TREASURY DEPARTMENT, *September 19, 1911.*

SIR: The department is in receipt of your letter of the 15th instant in which you invite attention to the decision of the Board of United States General Appraisers of August 24, 1911, Abstract 26422 (T. D. 31842), wherein it is held that certain exhausters and pumps, which were classified as earthenware under paragraph 94 of the tariff act of August 5, 1909, were properly dutiable as articles composed of earthy or mineral substances under paragraph 95 of the said act.

As the issue is an important one, you are requested to file, in the name of the Secretary of the Treasury, an application with the United States Court of Customs Appeals for a review of the said decision, in accordance with the provisions of subsection 29 of section 28 of the said tariff act.

Respectfully, JAMES F. CURTIS,
(91249.) *Assistant Secretary.*

Mr. WM. L. WEMPLE,
Assistant Attorney General, New York.

(T. D. 31872.)

Modeling clay—Plasticine.

Appeal directed from decisions of the Board of United States General Appraisers of August 14 and 17, 1911, Abstracts 26362 and 26387 (T. D. 31832), involving the classification of modeling clay and plasticine, respectively.

TREASURY DEPARTMENT, *September 19, 1911.*

SIR: The department is in receipt of your letter of the 13th instant in which you invite attention to the decisions of the Board of United

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States General Appraisers of August 14, 1911, Abstract 26362 (T. D. 31832), and August 17, 1911, Abstract 26387 (T. D. 31832), involving the classification of modeling clay and plasticine, respectively, wherein it is held that the merchandise under consideration, which was assessed with duty as an article composed of earthy or mineral substances under paragraph 95 of the tariff act, was properly dutiable as a nonenumerated manufactured article under paragraph 480 of the said act.

As the issue is an important one, you are requested to file, in the name of the Secretary of the Treasury, an application with the United States Court of Customs Appeals for a review of the said decision, in accordance with the provisions of subsection 29 of section 28 of the said act.

Respectfully, JAMES F. CURTIS,
(82687.) *Assistant Secretary.*

Mr. WM. L. WEMPLE,
Assistant Attorney General, New York.

(T. D. 31873.)

Gauge of ale.

Appeal directed from decision of the Board of United States General Appraisers of September 9, 1911, G. A. 7270 (T. D. 31850), involving the question of the gauge of ale.

TREASURY DEPARTMENT, *September 20, 1911.*

SIR: The department is in receipt of your letter of September 13, 1911, relative to the decision of the Board of United States General Appraisers of September 9, 1911, G. A. 7270 (T. D. 31850), wherein it is held that a minimum allowance will be made of 3 gallons per hogshead and a proportionate amount on other containers of Bass' imported ale.

In view of the importance of the issue, you are hereby requested to file, in the name of the Secretary of the Treasury, an application with the United States Court of Customs Appeals for a review of the said decision, in accordance with the provisions of subsection 29 of section 28 of the tariff act of 1909.

Respectfully, JAMES F. CURTIS,
(57773.) *Assistant Secretary.*

Mr. WM. L. WEMPLE,
Assistant Attorney General, New York.

(T. D. 31874.)

Drawback on prepared figs.

Drawback on prepared figs manufactured by Van Dyk & Catrevas, of New York City, from imported dry-packed figs.

TREASURY DEPARTMENT, *September 20, 1911.*

SIR: Drawback is hereby allowed under section 25 of the tariff act of August 5, 1909, and the regulations promulgated thereunder

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(T. D. 31695 of June 16, 1911), on prepared figs manufactured by Van Dyk & Catrevas, of New York City, from imported dry-packed figs, the process involving the treatment of the figs with a sirup solution.

The allowance shall not exceed the net weight of the exported treated figs.

The manufacturers' sworn statement, dated August 5, 1911, is transmitted herewith for filing in your office.

Respectfully, JAMES F. CURTIS,
(90460.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 31875.)

Drawback on Magnolia metal.

Drawback on Magnolia metal manufactured by the Magnolia Metal Co., of New York City, with the use of imported lead and antimony.—T. D. 12772 of May 2, 1892, revoked.

TREASURY DEPARTMENT, *September 20, 1911.*

SIR: Drawback is hereby allowed under section 25 of the tariff act of August 5, 1909, and the regulations promulgated thereunder (T. D. 31695 of June 16, 1911), on Magnolia metal manufactured by the Magnolia Metal Co., of New York City, with the use of imported lead and antimony.

The drawback entry should show the formula under which the metal was manufactured and the quantities of imported materials used.

The allowance shown should not exceed 60 pounds of imported lead and 13.5 pounds of imported antimony for each 100 pounds of exported metal.

The manufacturers' sworn statements, dated June 14 and July 31, 1911, are transmitted herewith for filing in your office. T. D. 12772 of May 2, 1892, is hereby revoked.

Respectfully, JAMES F. CURTIS,
(89113.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 31876.)

Drawback on toilet preparations.

Drawback on talcum powder, tooth powder, and Circassian Beauty Extract manufactured by the Wilbert Co., of Philadelphia, Pa., in part from imported chalk, talcum, and domestic tax-paid alcohol.

TREASURY DEPARTMENT, *September 20, 1911.*

SIR: Drawback is hereby allowed under section 25 of the act of August 5, 1909, and the regulations promulgated thereunder (T. D.

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31695 of June 16, 1911), on talcum powder, tooth powder, and Circassian Beauty Extract manufactured by the Wilbert Co., of Philadelphia, in part from imported chalk, talcum, and domestic tax-paid alcohol.

The allowance shall not exceed 7½ pounds of imported chalk for each gross boxes of tooth powder; 31 pounds of Italian talc for each gross of cans of talcum powder, and in the case of alcohol 88 per cent of the exported quantity of the extract.

The manufacturers' sworn statement, dated July 15, 1911, is herewith inclosed for filing in your office.

Respectfully, JAMES F. CURTIS,
(89631.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Philadelphia, Pa.*

(T. D. 31877.)

Drawback on prepared figs.

Drawback on prepared figs manufactured by Arguinbau & Ramee, of New York City, from imported dry-packed figs.

TREASURY DEPARTMENT, *September 20, 1911.*

SIR: Drawback is hereby allowed under section 25 of the tariff act of August 5, 1909, and the regulations promulgated thereunder (T. D. 31695 of June 16, 1911), on prepared figs manufactured by Arguinbau & Ramee, of New York City, from imported dry-packed figs, the process involving the treatment of the figs with a sirup solution.

The allowance shall not exceed the net weight of the exported prepared figs.

The manufacturers' sworn statements, dated July 19 and August 30, 1911, are transmitted herewith for filing in your office.

Respectfully, JAMES F. CURTIS,
(61999.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 31878.)

Conference of local appraisers, 1911—Date of convening changed from November 6 to November 13.

TREASURY DEPARTMENT, *September 25, 1911.*

To collectors and other officers of the customs:

The date for the beginning of the conference of local appraisers is hereby changed from November 6 to November 13, 1911. T. D. 31837 of August 25, 1911, is therefore amended accordingly.

JAMES F. CURTIS, *Assistant Secretary.*

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(T. D. 31879.)

Wood pulp—Printing paper.

Reaffirmance of department's practice under T. D. 26804 relative to assessing countervailing duty only on that portion of Canadian pulp or printing paper made from wood cut on Crown lands.

TREASURY DEPARTMENT, *September 26, 1911.*

SIR: I have to acknowledge the receipt of your letter of the 20th instant contending that if an importation of print paper, the product of Canada, was made in part from wood cut on restricted lands and in part from wood cut on private lands countervailing duty should be assessed on the whole importation.

In reply I have to state that when the similar question first arose under paragraphs 393 and 396 of the tariff of 1897, the department held that countervailing duty must be assessed on the whole importation. In the Myers' case the Board of General Appraisers decided otherwise (G. A. 5592, T. D. 25035 of Feb. 17, 1904). The department appealed (T. D. 25098 of Mar. 12, 1904). The United States Circuit Court for the Northern District of New York sustained the board (T. D. 26659 of July 31, 1905). In T. D. 26804 of October 26, 1905, the department acquiesced, and it has followed the court's decision ever since.

It is the opinion of the department that there is nothing in section 2 of the act of July 26, 1911, incompatible with the long-standing practice above set forth.

Respectfully,
(85245.)
Mr. ——— ———.

JAMES F. CURTIS,
Assistant Secretary.

(T. D. 31880—G. A. 7274.)

Mixture of egg yolks and whites.

A frozen mixture imported in tins of about 43 pounds each, and consisting of 75 per cent yolk of egg and 25 per cent white, though not in the proportions of yolk and white found in the natural egg, is dutiable, by similitude, under paragraph 256, tariff act of 1909, as "eggs, not specially provided for in this section, five cents per dozen," on the basis of 11 eggs to the pound.

United States General Appraisers, New York, September 21, 1911.

In the matter of protest 497119 of H. Horsfield against the assessment of duty by the collector of customs at the port of New York.

Before Board 3 (WAITE, SOMERVILLE, and HAY, General Appraisers; SOMERVILLE, G. A., absent).

WAITE, *General Appraiser:* The goods in question in this case are invoiced as "2,600 cases egg yolk and 25 per cent albumen, each containing 2 tins of 43 pounds each." They are imported from China, having been transshipped at Liverpool. The merchandise is the prop-

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erty of H. Horsfield, the same party named as appellant in the case of H. Horsfield *v.* United States, decided by the Court of Customs Appeals. (1 Ct. Cust. Appls., 138; T. D. 31186.)

The materials in this commodity, according to the testimony, consist of the white and yolk of eggs, put up in tin cans containing about 43 pounds each and frozen. The testimony shows that the proportion of yolk and white is about three parts of yolk to one of white. The chemist who was on the stand in this case testified that the ordinary egg consists of approximately 1 part of yolk to 2 parts of white. The only difference between this commodity and broken eggs, which have been held by this board and the courts to be dutiable under paragraph 256, tariff act of 1909, as eggs at 5 cents per dozen, is that the relative proportions of white and yolk vary. Otherwise, the commodity in question here contains every element contained in the natural egg except the shell. In the case of Horsfield *v.* United States, *supra*, the importation was found by the court to be broken eggs, or the white and yolk of eggs mixed, and consisting of 3 parts of white to 2 of yolk. It was there found to be essentially eggs, the proportion of white and yolk being about the same as in the natural egg. From that finding and the testimony in this case, we are led to conclude that the proportion of the white and yolk in eggs varies; probably not as much, however, as indicated in the commodity here in question. This was stated by the importer to be an experimental importation, and from what we can gather from the record of the two cases as to the method of handling this commodity, we are constrained to think that the proportions of white and yolk have been varied for the purpose of meeting the court decision. It is true that the commodity here in question is not eggs, having reference to the relative proportions of the white and yolk as found in the egg in its entirety. At the same time it contains all the elements of the egg, and, we conclude, is used for practically the same purposes for which broken eggs are used; at all events, it is used as a food or in the preparation of articles for food.

Duty has been assessed on this importation as eggs at 5 cents per dozen under paragraph 256, tariff act of 1909, on the basis of 11 eggs to the pound. Protestant claims the substance should be dutiable, either directly or by similitude, at 3 cents per pound under paragraph 257 as "albumen, egg or blood," or at 25 per cent ad valorem under the provision in the same paragraph for "eggs, yolks of." Additional claims are made under paragraphs 480, 486, 499, 560, and 566, which we do not think necessary to discuss.

It is also claimed in the brief filed for the importer that the yolk and white should be separated for duty purposes, the proportion of yolk mixture being dutiable under paragraph 257 as yolks of eggs, and the amount of whites under the same paragraph as albumen. We are mindful of the decision of the Court of Customs Appeals in United

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States *v.* Waterhouse (1 Ct. Cust. Appls., 353; T. D. 31452), where it was held that dutiable goods imported mixed with other goods subject to another rate of duty or none at all, if practically separable or if determinable in quantity may, on a levy of duties, be segregated for that purpose. We think, however, that this commodity is not capable of separation for duty purposes. It is imported in a mixed state and intended to be used in that condition, and there is no practicable way to determine definitely the amount of each component. It is true the determination was made in this case by boring through the frozen substance. We can, however, readily conceive of this being very inaccurate in case the yolks were heavier than the whites, and one had settled in a position by itself, thus making it impracticable to determine accurately by taking a boring haphazard. The claim for separation was not made in the protest, however, and need not be further considered.

The claim in the protest that this substance should all be considered albumen of eggs and so assessed, by reason of chief value, under paragraphs 257 and 481, is inconsistent with the evidence, the importer's witness having testified that the chief value of this particular mixture is in the yolk portion. A contention is also made that the entirety should be dutiable as yolk of eggs. These claims, however, need not be further discussed, as we are of the opinion that the whole mixture is dutiable as eggs by similitude, its consistency being more nearly like that of eggs than similar to egg yolk alone.

The last claim in the protest, that the collector has proceeded upon a wrong theory in estimating that 11 eggs make a pound, has not been referred to in the testimony. The collector seems to have proceeded according to a practice which has been in vogue for some time, and stands unimpeached by the testimony of the importer in any way.

Under all the circumstances of the case, we are constrained to hold that this commodity, while not the true egg, nevertheless is dutiable as egg by similitude. We therefore so hold, affirming the finding of the collector and overruling the protests in all respects.

(T. D. 31881—G. A. 7275.)

Horsehair hats.

Horsehair hats, untrimmed, are properly dutiable by similitude to straw hats, untrimmed, at the rate of 35 per cent ad valorem under paragraph 422, tariff act of 1909.—Paterson *v.* United States (166 Fed. Rep., 733; T. D. 29377) and United States *v.* Rheims (175 Fed. Rep., 778; T. D. 30226) cited.

United States General Appraisers, New York, September 22, 1911.

In the matter of protest 445793 of Buss & Wanner against the assessment of duty by the collector of customs at the port of New York.

Before Board 2 (Fischer, Howell, and Cooper, General Appraisers).

Howell, *General Appraiser:* The merchandise in question consists of untrimmed hats made of horsehair braid. Hats of this character

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are not specially provided for in the tariff act of 1909, under which this importation was made, and the collector reached the conclusion that they should be classified as assimilating to "articles composed of artificial or imitation horsehair," and therefore dutiable by virtue of the provisions of paragraph 481 of said act at 45 cents per pound and 60 per cent ad valorem under paragraph 405. The pertinent provision in paragraph 405 reads as follows:

Braids, laces, embroideries, galloons, neck rufflings, ruchings, fringes, trimmings, beltings, cords, tassels, ribbons, or other articles or fabrics composed wholly or in chief value of yarns, threads, filaments, or fibers of artificial or imitation silk or of artificial or imitation horsehair, by whatever name known, and by whatever process made, forty-five cents per pound, and in addition thereto, sixty per centum ad valorem.

The importers claim that these hats are properly dutiable at 35 per cent ad valorem by similitude to straw hats under paragraph 422 of said act, which paragraph reads as follows:

422. Braids, plaits, laces, and willow sheets or squares, composed wholly or in chief value of straw, chip, grass, palm leaf, willow, osier, rattan, real horsehair, Cuba bark, or manila hemp, suitable for making or ornamenting hats, bonnets, or hoods, not bleached, dyed, colored, or stained, fifteen per centum ad valorem; if bleached, dyed, colored, or stained, twenty per centum ad valorem; hats, bonnets, and hoods composed wholly or in chief value of straw, chip, grass, palm leaf, willow, osier, rattan, Cuba bark, or manila hemp, whether wholly or partly manufactured, but not trimmed, thirty-five per centum ad valorem; if trimmed, fifty per centum ad valorem. But the terms "grass" and "straw" shall be understood to mean these substances in their natural form and structure, and not the separated fiber thereof.

In support of their contention the importers cite the decision of the Circuit Court for the Southern District of New York in Rheims *v.* United States (169 Fed. Rep., 662; T. D. 29632), which was affirmed by the Circuit Court of Appeals, Second Circuit, in United States *v.* Rheims (175 Fed. Rep., 778; T. D. 30226), where similar hats were held dutiable by similitude to straw hats under paragraph 409, tariff act of 1897. Those decisions followed Paterson *v.* United States (166 Fed. Rep.,733; T. D. 29377), in which case the Circuit Court of Appeals for the Second Circuit held that horsehair braids used in the manufacture of hats were dutiable under said paragraph 409 by similitude to straw braids.

In the tariff act of 1897 there was no denominative provision for braids or hats made of real or artificial horsehair, and such braids and hats were held by this board to be dutiable by similitude to silk braids and hats, respectively. G. A. 6223 (T. D. 26897), Abstract 16500 (T. D. 28384), and G. A. 6606 (T. D. 28217).

The court decisions which we have cited, *supra*, reversed the board's rulings and associated braids and hats of horsehair with braids and hats of straw. In the present tariff, braids made wholly or in chief value of real horsehair, suitable for making or ornamenting hats, are pro-

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vided for in paragraph 422 at the same rate as the other hat braids therein named, while braids "and other articles" (which would, of course, include hats) made of artificial or imitation horsehair are provided for in paragraph 405. There is, however, no special provision in the act for hats made of *real* horsehair.

Assumably the decisions in the Paterson and Rheims cases, *supra*, were known to Congress at the time of the passage of the tariff act of 1909, and Congress apparently adopted the court's rulings, at least so far as the braids are concerned, by making an *eo nomine* provision for such articles in the paragraph of the present act corresponding to the paragraph in the act of 1897 under which they had been assessed. No special provision was made, however, for hats made of real horsehair, and as the provision of the statute under which they had been assessed by similitude was reenacted without any substantial change, the importers contend that this is an indication of the approval by Congress of the classification prevailing at that time.

Counsel for the Government, on the other hand, calls attention to the fact that the provision for hats in paragraph 422 is limited to those made of certain specified materials, which materials are the same as the braid materials named in the first clause of the paragraph, with the exception of real horsehair, which is omitted in the hat provision, and he argues that this omission indicates an intention on the part of Congress to exclude hats made of real horsehair from direct classification under that paragraph, and therefore they can not be brought within the operation of the paragraph by application of the similitude clause.

The argument that where the terms of a paragraph are so worded as to plainly indicate the intention to exclude from direct classification thereunder any particular article, then such article may not be brought within the provision by application of the similitude clause, undoubtedly finds support in the decision of the United States Court of Customs Appeals in Fensterer & Ruhe *v.* United States. (1 Ct. Cust. Appls., 93; T. D. 31110.) But is the paragraph here in question (par. 422) so worded as to indicate an intention on the part of Congress to exclude real horsehair hats from classification thereunder? The provisions of the paragraph relating to hats are substantially the same as the corresponding provisions in the tariff act of 1897, under which the courts held hats made of horsehair to be dutiable by similitude to straw hats.

The only change in the paragraph which is at all material to this controversy is the insertion of the words *real horsehair* in the first clause, which relates to hat braids only. As both horsehair braids and horsehair hats were classified by similitude to straw braids and straw hats, respectively, under the corresponding paragraph in the act of 1897, and Congress has now made specific provision for the braids

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only in this paragraph, while no denominative provision has been made for real horsehair hats either in this or any other paragraph, the question which we are called upon to decide is whether Congress has indicated an intention in the act of 1909 to change the classification of these goods which prevailed under the act of 1897. The question is not entirely free from doubt. But we think that if the Congress had intended to change the law so as to exclude these hats from paragraph 422, they would have used language clearly expressive of such intent. As they have failed to make special provision for such hats, and have reenacted, without substantial modification, the provision of the previous law under which they were classified, we think the more reasonable view to take is that they did not intend to disturb the classification which prevailed under the act of 1897.

We accordingly hold that the hats are properly dutiable by similitude under paragraph 422, and the protest is sustained to this extent.

(T. D. 31882—G. A. 7276.)

Tapestries—Upholstery goods.

Tapestry panels, composed of cotton Jacquard figured goods, weighing over 6 ounces per square yard, are dutiable under the provision in paragraph 326, tariff act of 1909, for "tapestries, and other Jacquard figured upholstery goods."

United States General Appraisers, New York, September 22, 1911.

In the matter of protests 433812, etc., of Ferd Bing & Co.'s successors et al. against the assessment of duty by the collector of customs at the port of New York.

Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers).

COOPER, *General Appraiser:* These protests relate to the classification for dutiable purposes of tapestry panels, composed of cotton Jacquard figured goods, weighing over 6 ounces per square yard. Duty was collected thereon at the rate of 50 per cent ad valorem under paragraph 326, tariff act of 1909, which, so far as pertinent, reads as follows:

Curtains, table covers, and all articles manufactured of cotton chenille, * * * tapestries, and other Jacquard figured upholstery goods, weighing over six ounces per square yard, composed wholly or in chief value of cotton or other vegetable fiber; any of the foregoing, in the piece or otherwise. * * *

The claims in the protests are that the merchandise is dutiable as countable cotton cloth under paragraphs 315 to 319, or as articles made from cotton cloth or manufactures of cotton under paragraph 322, or as manufactures of flax under paragraph 358.

The provision for "tapestries, and other Jacquard figured upholstery goods," is a new one in tariff legislation. The contention of the protestants, as appears from the record (no brief having been filed in their behalf), is that only such tapestries as are upholstery goods are

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dutiable under paragraph 326, and that the term "upholstery goods" signifies goods used for covering furniture and does not include the articles in controversy.

These tapestry panels, as shown by the testimony, are used for interior decoration, as a painting or picture, also for cushion tops, and for screens. At the trial, the witnesses for the protestants testified that the term "upholstery goods" had a limited meaning in the wholesale trade and included only goods sold by the yard and used for covering furniture. The several witnesses called by the United States testified that the term had a broader meaning, and included the articles in question. The testimony also shows that the fabric of which these articles are made is of the same weave and construction as the cotton Jacquard figured goods used for covering furniture.

There is a preponderance of evidence to the effect that the term "upholstery goods," as used in the wholesale trade throughout the country, signifies all textile fabrics of that character used for interior household decoration and would include the articles covered by these protests. But we do not think that any meaning different from the ordinary dictionary meaning has been proved. The language as commonly used would include articles of the character here in question, as shown by the following definitions:

Standard Dictionary:

Upholstery.—Goods or materials used in upholstering; textile decoration of an apartment.

Century Dictionary:

Upholstery.—Furniture covered with textile material, and hangings, curtains, and the like. A general term for all such interior decorations and fittings as are made with textiles.

Webster's New International Dictionary:

Upholstery.—Furniture or interior fittings, as hangings, cushions, curtains, coverings, etc., covered or made with textile materials, leather, and the like.

It is pertinent to note that these tapestries are valuable decorative adjuncts in the furnishings of rooms, and that they cost much more than the cotton fabrics and articles which are ordinarily classifiable as countable cotton cloth or manufactures of cotton. That Congress intended that they should pay a higher rate of duty than ordinary cotton cloth or cotton articles is a natural conclusion in view of the principle running through all tariff acts that the more valuable goods should pay the higher duty.

The articles in question are tapestries and are Jacquard figured goods of cotton weighing over 6 ounces per square yard, and we find from the evidence that they are upholstery goods. We therefore hold that the merchandise is specifically provided for by the provision in paragraph 326 above quoted.

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Whether the provision for "tapestries" in paragraph 326 is restricted in its application by the phrase which follows it, or whether the phrase "other Jacquard figured upholstery goods" is intended to include goods other than tapestries, is a question which, in view of the evidence submitted, is not necessarily involved in the decision of these cases. However, the most natural and reasonable construction would seem to be that the provision for tapestries is an independent provision and includes all tapestries of the material and weights mentioned in the paragraph. This view is in accordance with the construction given the word "other" by the Court of Customs Appeals in the case of United States *v.* American Express Co. (T. D. 31636). See also United States *v.* Mescall (215 U. S., 26; T. D. 30131).

The protests are overruled and the decision of the collector in each case affirmed.

(T. D. 31883.)

Abstracts of decisions of the Board of General Appraisers.

Board 1.—Sharretts, McClelland, and Chamberlain. *Board 2.*—Fischer, Howell, and Cooper. *Board 3.*—Waite, Somerville, and Hay.

BEFORE BOARD 1, SEPTEMBER 18, 1911.

No. 26621.—ARTICLES OF PERSONAL ADORNMENT.—Protest 498414 of L. P. Hollander & Co. (Boston). Opinion by Sharretts, G. A.

Merchandise inadvertently classified as articles of personal adornment under paragraph 448, tariff act of 1909, was held dutiable as manufactures of metal (par. 199), as claimed by the importers.

No. 26622.—GUN-METAL MESH BAGS.—Protest 460675 of F. H. Shallus (Baltimore). Opinion by Sharretts, G. A.

Protests sustained as to gun-metal mesh bags. G. A. 7129 (T. D. 31089) followed.

No. 26623.—COLLAR SUPPORTS—ARTICLES OF PERSONAL ADORNMENT.—Protests 449756, etc., of R. F. Downing & Co. (Boston).

SHARRETTS, *General Appraiser:* The merchandise in question is so-called collar supports made of celluloid and set with imitation precious stones. These articles are worn on apparel in a position where the part containing the imitation precious stones is in view, and are intended to ornament the person. We find the merchandise to be articles of personal adornment, set with imitation precious stones, and hold it properly returned for duty at the equivalent rate of 85 per cent ad valorem under paragraph 448 of the tariff act of 1909. The protests are overruled on all grounds and the collector's decision affirmed.

No. 26624.—POCKET PENCILS.—Protest 502438 of B. Illfelder & Co. (New York). Opinion by Sharretts, G. A.

Pocket pencils in chief value of brass classified as articles of personal adornment under paragraph 448, tariff act of 1909, were held dutiable as manufactures of metal (par. 199). Protests sustained on the authority of G. A. 7129 (T. D. 31089).

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No. 26625.—Rosaries.—Protests 490803, etc., of Benziger Brothers (New York). Opinion by Sharretts, G. A.

Protests sustained as to rosaries on the authority of G. A. 7179 (T. D. 31348).

No. 26626.—Lace Pins.—Protests 490587, etc., of F. L. Kraemer & Co. et al. (New York).

Sharretts, *General Appraiser:* The articles in question consist of lace pins, gold plated, which the appraiser reports are valued at less than 20 cents per dozen pieces. By reason of their cheapness these pins are by terms excluded from the first clause of paragraph 448, act of 1909, but they were returned for duty at 60 per cent ad valorem under the provisions of the same paragraph for articles commonly or commercially known as jewelry composed of gold or platinum. The percentage of gold in the pins in question is comparatively insignificant, and they are not made in any part of platinum; hence, in our opinion, they are excluded from the last clause in paragraph 448 also.

Under the act of 1897, the Board, on ample evidence, held that similar gold-plated lace pins were not commonly or commercially known as jewelry, and we find that on and immediately before the passage of the tariff act of 1909 they were not so known.

Protests 490587 and 495796, claiming 45 per cent ad valorem duty on the merchandise under paragraph 199 of the act of 1909, are sustained, the collector's decision in each case being reversed. * * *

No. 26627.—Metal Cigarette Cases.—Protests 433868, etc., of C. A. Clark (New York). Opinion by Sharretts, G. A.

Protests sustained as to metal cigarette cases on the authority of G. A. 7102 (T. D. 30942).

No. 26628.—Imitation Precious Stones—Hatpin Tops—Parts of Jewelry.—Protest 152599 of Errico Bros. (New York).

Sharretts, *General Appraiser:* The appraiser reports:

The merchandise consists of imitation precious stones in the form of balls, partly drilled; also metal rods which are designed to be fastened into the balls, and when so attached are known as hatpins. It was returned for duty under paragraph 434 (act of 1897) as parts of jewelry, at the rate of 60 per cent ad valorem.

The imitation precious stones have never been set on the shafts nor are there the same number of heads and shafts, as shown by the separate items on the invoice. They would seem to be materials for use in the manufacture of hatpins, and can not be made into completed articles without further manufacture. We find they are not parts of jewelry and sustain the claims of the protestants, which is limited to the imitation precious stones, that the merchandise marked "A" in lead pencil on the invoice is dutiable as imitation precious stones, cut but not set, at 20 per cent ad valorem under paragraph 435 of the act of 1897. The collector's decision is reversed to the extent indicated. The assessment of duty at 60 per cent ad valorem on the shafts marked "B," not having been appealed from, stands undisturbed.

No. 26629.—Protests Overruled.—Protest 497488-37445 of Sears, Roebuck & Co., and protest 249467-24352 of G. W. Sheldon & Co. (Chicago), and protests 250751, etc., of Baum, Linz & Cohen et al., protests 5025h, etc., of George Borgfeldt & Co. et al., and protest 273076 of Veit, Son & Co. (New York). Opinions by Sharretts, G. A.

Protests overruled for want of merit.

No. 26630.—Protests Overruled.—Protest 408385-31622 of Americ n Shipping Co. (Chicago), and protest 445312 of Louis Dejonge & Co., protests 299517, etc., of L. J. Kreshover et al., and protests 369673, etc., of A. Zeregas' Sons et al. (New York). Opinions by McClelland, G. A.

Protests overruled for want of merit.

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BEFORE BOARD 2, SEPTEMBER 18, 1911.

No. 26631.—ROUGH-TRIMMED MICA.—Protest 505189 of Eugene Munsell & Co. (New York). Opinion by Fischer, G. A.

Protest sustained as to rough-trimmed mica on the authority of United States *v.* Myers (1 Ct. Cust. Appls., 257; T. D. 31301).

No. 26632.—UPHOLSTERY GOODS.—Protest 480134 of B. Altman & Co. (New York). Opinion by Cooper, G. A.

Upholstery goods of jute and cotton which were inadvertently classified as Jacquard-figured upholstery goods under paragraph 326, tariff act of 1909, were held dutiable as manufactures of cotton (par. 332), as claimed by the importers.

No. 26633.—COTTON YARN.—Protests 472301, etc., of Bernhard Ulmann & Co. (New York). Opinion by Cooper, G. A.

Embroidery cotton in skeins of more than 600 yards each, classified as embroidery cotton under paragraph 314, tariff act of 1909, was held dutiable as cotton yarn (par. 313). Protests sustained.

No. 26634.—DIVING SUITS.—Protest 463403 of F. B. Vandegrift & Co. (New York). Opinion by Cooper, G. A.

Diving suits in chief value of rubber, which were classified as cotton wearing apparel under paragraph 314, tariff act of 1897, were held dutiable as manufactures of rubber (par. 449).

No. 26635.—DRAWNWORK.—Protest 463374 of J. R. Simon & Co. (New York). Opinion by Cooper, G. A.

Protests sustained as to drawnwork articles on the authority of G. A. 6993 (T. D. 30442).

No. 26636.—BRATTICE CLOTH.—Protest 459529 of Mineralized Rubber Co. (New York). Opinion by Cooper, G. A.

Protest sustained as to brattice cloth. G. A. 7104 (T. D. 30967) followed.

No. 26637.—COTTON CLOTH.—Protests 449207, etc., of Doull, Miller Co. et al., protests 457353, etc., of E. McConnell & Co. et al., and protests 457175, etc., of Kark Neuhoff et al. (New York). Opinions by Cooper, G. A.

Certain cotton cloth was found not to have been mercerized and therefore held to have been improperly subjected to the additional duty provided in paragraph 323, tariff act of 1909, for mercerized cotton cloth.

No. 26638.—FLAX FABRICS.—Protests 451625, etc., of Perkins, Van Bergen & Co. (New York). Opinion by Cooper, G. A.

Fabrics of cotton and flax classified as manufactures of cotton under paragraph 332, tariff act of 1909, were held dutiable as flax fabrics (par. 357), as claimed by the importers.

No. 26639.—COTTON CLOTH WITH MERCERIZED SELVAGES.—Protests 449808, etc., of C. A. Auffmordt & Co. (New York).

COOPER, *General Appraiser:* The merchandise covered by these protests is cotton dress goods, the selvages of which are mercerized. It is claimed that such cloth is not subject to the additional duty of 1 cent per square yard provided in paragraph 323, tariff act of 1909, for mercerized cotton cloth.

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In United States *v.* Mandel (1 Ct. Cust. Appls., 223; T. D. 31259) the Court of Customs Appeals laid down the rule that the selvages of cotton cloth, when merely incidental to the manufacture of the cloth, though dutiable, are to be disregarded in ascertaining the character of the cloth. The testimony in this case shows that the selvages are of no practical use other than to prevent unraveling of the cloth, and that they are in fact discarded when the cloth is made into dresses. The cloth is, therefore, not mercerized within the meaning of paragraph 323, unless the following provision in paragraph 320 is applicable:

> The terms * * * mercerized * * * wherever applied to cotton cloth in this schedule, shall be taken to mean respectively all cotton cloth which either wholly or in part has been subjected to any of these processes, or which has any * * * mercerized * * * threads in or upon any part of the fabric.

While this would seem to justify the collector's action, when the reason for the insertion of this provision is considered we think the opposite conclusion must be reached. The Circuit Court of Appeals, Second Circuit, in the case of United States *v.* Rusch (167 Fed. Rep., 523; T. D. 29506) held that cotton cloth the greater portion of the surface of which was covered with colored "other than the ordinary warp and filling threads" was not dutiable as colored cloth, but according to the condition of the foundation cloth. This no doubt induced Congress to make the change in the law above quoted, and we do not think that said change requires the application of a different rule from that in the Mandel case, *supra*. A fair interpretation of it does not conflict with the rule that the selvage shall not control the classification when it is a mere incident to the process of manufacture.

The protests are sustained.

No. 26640.—Cotton Cloth.—Protest 455093 of Brown & Roese, and protests 461308, etc., of Kaskel & Kaskel (New York). Opinions by Cooper, G. A.

The board sustained claims of the importers that certain cotton cloth was not subject to the additional duty provided in paragraph 323, tariff act of 1909, for figured cotton cloth. Note United States *v.* McConnell (1 Ct. Cust. Appls., 73; T. D. 31104).

No. 26641.—Scalloped Articles.—Protest 420562 of S. Haas & Co. (New York). Opinion by Cooper, G. A.

Protest sustained as to scalloped articles on the authority of G. A. 6966 (T. D. 30271).

No. 26642.—Cotton Cloth.—Protests 297027, etc., of John Darling & Co. (New York). Opinion by Cooper, G. A.

Cotton cloth classified under the tariff act of 1897 as colored was held dutiable as bleached or unbleached cotton cloth. G. A. 6956 (T. D. 30206) followed.

No. 26643.—Protests Overruled.—Protests 476937, etc., of Crompton & Knowles Loom Works et al. (Boston), protests 483250–36450, etc., of T. Buettner & Co., protests 457780–35633 and 467172–35663 of John V. Farwell Co., protests 450280–35032 and 469043–35889 of Marshall Field & Co., and protests 459273–35383, etc., of Sears, Roebuck & Co. et al. (Chicago), protests 396574, etc., of Reins & Meiss (Cincinnati), protest 471704 of Germania Importing Co., protest 472493 of Knauth, Nachod & Kuhne, protests 463269, etc. of John McCann & Co., and protests 452054, etc., of Poirier & Lindeman et al. (New York), protest 439069 of D. P. Brown & Co., and protest 448237 of John Wanamaker (Philadelphia), and protests 412842, etc., of R. Pierson & Co. et al., and protest 437071 of Rice-Stix Dry Goods Co. (St. Louis). Opinions by Cooper, G. A.

Protests overruled for want of merit.

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BEFORE BOARD 3, SEPTEMBER 18, 1911.

No. 26644.—RIPE OLIVES—SUFFICIENCY OF PROTEST.—Protest 279507 of V. Barbera (New York).

WAITE, *General Appraiser:* Rehearing was granted in this case, and the protest is now submitted upon a memorandum filed by counsel for the importer, wherein the statement is made that a clerical error arose in the original decision of the board (Abstract 24916; T. D. 31335) for the reason that said decision allowed free entry to black olives contained in cases 16–20 of the invoice, whereas the record shows that cases 10–20 contained black olives. It is true that the report of the United States gauger shows that cases 10–20 contained black olives, but the protest was sustained in the original decision as to cases 16–20 only, because it was those cases only which were covered by the protest according to the enumeration in the lower right-hand corner thereof. No clerical error was made, as claimed in the application for rehearing, but the decision was intentionally limited to the cases named in the protest on the theory that the importer is not entitled to more than he claims in his protest. As was stated by the board in Abstract 20683 (T. D. 29559):

> These protests are in the nature of pleadings, and the rule is well settled that a complainant is never entitled to recover more than he claims, although the testimony may show him to be entitled to a larger amount.

The fact that in this case the form of the protest contains in the space set apart for "Marks and Nos." the words "and various as per entries and invoices," will not avail the importer, under the rulings of the board and the courts. Note *In re* Pickhardt, G. A. 5250 (T. D. 24136), which held that a protest must be considered as relating only to the goods specified therein, and that where particular items of an invoice are enumerated no other portion of the invoice can be held to be covered by the protest. See also Mason's case, Abstract 26314 (T. D. 31813). "In pleading, a general averment is always limited and controlled by specific allegations upon the same subject." Boatmen's Bank *v.* Fritzlen (135 Fed. Rep., 650, 659); Hayes *v.* St. Louis T. Co. (137 Fed. Rep., 80, 85).

Adhering to our original decision, the collector is instructed to grant free entry under paragraph 559, tariff act of 1897, to the olives contained in cases 16–20, the protest being overruled in other respects.

No. 26645.—PROTESTS OVERRULED.—Protests 491145, etc., of F. B. Vandegrift & Co. (Philadelphia). Opinion by Hay, G. A.

Protests overruled for want of merit.

BEFORE BOARD 1, SEPTEMBER 15, 1911.

No. 26646.—OXIDE OF IRON—COLOR.—Protests 178941, etc., of George Z. Collins et al. (Boston).

MCCLELLAND, *General Appraiser:* The issue involved in this case, to wit, the classification of certain oxide of iron, was originally considered and determined by the board on January 26, 1909, adversely to protestants (G. A. 6857; T. D. 29497). Subsequently thereto, and within the time prescribed by statute, protestants took an appeal to the United States Circuit Court, District of Massachusetts (suit 2063). Thereafter, on March 7, 1910, said Circuit Court made an order remanding the case to the Board of General Appraisers, the purposes of said order being stated, in part, as follows:

> In order that said board may hear such further testimony as shall be introduced by either party; and that it is further ordered that said board shall return to this court additional evidence so taken by it, together with a further certified statement of facts as supplemented or modified by such additional testimony, together with their decisions upon the whole case as thus supplemented or modified.

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Pursuant to said order the cases were set for rehearing and further testimony bearing upon the issues submitted both on behalf of protestants and the Government, and upon the full record as thus finally made the board finds the facts to be as stated in its decision G. A. 6857, *supra*, there being nothing in the evidence taken subsequent to the granting of the order hereinbefore mentioned to warrant any change of finding.

The protests are therefore overruled and the collector's assessment of duty in each case is affirmed.

BEFORE BOARD 1, SEPTEMBER 19, 1911.

No. 26647.—FUR SKINS, DRESSED—BEAVER STRIPS.—Protests 455572, etc., of Mautner & Ahlswede et al. (New York). Opinion by McClelland, G. A.

Protests sustained as to dressed fur skins and beaver strips on the authority of G. A. 7063 (T. D. 30765), G. A. 7109 (T. D. 30990), and G. A. 7125 (T. D. 31085).

No. 26648.—PROTESTS ABANDONED.—Protests 243565, etc., of Moos & Co. et al. (New York). Opinion by McClelland, G. A.

Protests abandoned.

BEFORE BOARD 2, SEPTEMBER 19, 1911.

No. 26649.—CYLINDRICAL METAL CONTAINERS.—Protests 441769, etc., of Crandall-Pettee Co. (New York). Opinion by Fischer, G. A.

Protests sustained as to cylindrical metal containers. Abstract 26485 (T. D. 31851) followed.

No. 26650.—PROTESTS ABANDONED.—Protests 433094, etc., of F. O. Boyd & Co. et al. (New York). Opinion by Fischer, G. A.

Protests abandoned

No. 26651.—PROTESTS ABANDONED.—Protests 301498, etc., of W. E. Allum et al. (New York). Opinion by Howell, G. A.

Protests abandoned.

No. 26652.—SCALLOPED ARTICLES.—Protests 247421, etc., of Lamb, Finlay & Co. (New York). Opinion by Cooper, G. A.

Protests sustained as to scalloped articles on the authority of G. A. 6966 (T. D. 30271).

No. 26653.—PROTESTS OVERRULED.—Protests 406217 of H. A. Caesar & Co. et al., protests 414630, etc., of H. H. Campbell & J. A. McNulty et al., protests 130177, etc., of M. H. Frank & Co. et al., protests 452852, etc., of Massce & Co. et al., protests 454917, etc., of New York Merchandise Co. et al., and protests 379279, etc., of James F. White & Co. et al. (New York). Opinions by Cooper, G. A.

Protests overruled for want of merit.

BEFORE BOARD 3, SEPTEMBER 19, 1911.

No. 26654.—PROTESTS OVERRULED.—Protests 446547, etc., of Chee Chong & Co. et al. (San Francisco). Opinion by Waite, G. A.

Protests overruled for want of merit.

No. 26655.—COVERINGS OF SPECIFIC-DUTY AND FREE GOODS.—Protests 420466, etc., of B. Wilmsen et al. (Philadelphia). Opinion by Hay, G. A.

Paper, cardboard, and pasteboard wrappers or containers of merchandise subject to specific duty or free of duty were held nondutiable, as claimed by the importers. United States *v.* Matagrin (1 Ct. Cust. Appls., 309; T. D. 31406) followed.

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No. 26656.—Powdered Talc.—Protests 504883, etc., of Binney & Smith Co. et al. (New York). Opinion by Hay, G. A.

Protests sustained as to powdered talc on the authority of Salomon *v.* United States (T. D. 31635).

No. 26657.—Protests Overruled.—Protests 396820, etc., of Sinclair-Rooney Co. (Buffalo), protests 388934–30639, etc., of Butler Bros. et al., and protests 404192, etc., of Lederer, Strauss & Co. (Des Moines). Opinions by Hay, G. A.

Protests overruled for want of merit.

Before Board 1, September 21, 1911.

No. 26658.—Exposure Meters.—Protests 415336–32332, etc., of Gallagher & Ascher (Chicago). Opinion by Sharretts, G. A.

Protests sustained as to exposure meters on the authority of G. A. 7028 (T. D. 30662).

No. 26659.—Toy Magic Lantern Slides and Chimneys.—Protests 395680–31175, etc., of Sears, Roebuck & Co. et al. (Chicago). Opinion by Sharretts, G. A.

Merchandise classified as glass slides for magic lanterns under paragraph 107, tariff act of 1909, and glass articles (par. 98), was held dutiable as toys (par. 431), as claimed by the importers. United States *v.* Borgfeldt (1 Ct. Cust. Appls., 370; T. D. 31455) followed.

No. 26660.—Rosaries.—Protest 494896 of D. S. Hesse & Brother (New York). Opinion by Sharretts, G. A.

Protest sustained as to rosaries on the authority of United States *v.* Benziger (178 Fed. Rep., 1006; T. D. 30385).

No. 26661.—Copper Belt Buckles.—Protests 461658, etc., of Soy Kee & Co. (New York). Opinion by Sharretts, G. A.

Copper belt buckles, enameled, classified as articles of personal adornment under paragraph 448, tariff act of 1909, were held dutiable as manufactures of metal (par. 199), as claimed by the importers. G. A. 7153 (T. D. 31206) followed.

No. 26662.—Glass Disks for Goggles.—Protests 437743, etc., of Motor Car Equipment Co. et al. (New York). Opinion by Sharretts, G. A.

Protests sustained as to glass disks for goggles on the authority of United States *v.* Thermo-Ware Co. (T. D. 31571).

No. 26663.—Gun-Metal Hand Bags.—Protest 464187 of B. Altman & Co. (New York). Opinion by Sharretts, G. A.

Ladies' hand bags composed of cotton and glass beads and having a gun-metal frame and chain attached, gun metal chief value, were classified as articles of personal adornment under paragraph 448, tariff act of 1909, and were claimed to be dutiable as manufactures of metal (par. 199). Protest sustained on the authority of G. A. 7129 (T. D. 31089).

No. 26664.—Protests Overruled.—Protest 452553–34634 of Butler Bros., and protests 252612–24419, etc., of George W. Sheldon & Co. (Chicago), protest 496681 of Stevens & Co. (New York), and protest 491652 of George D. Feidt & Co. (Philadelphia). Opinions by Sharretts, G. A.

Protests overruled for want of merit.

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No. 26665.—Friction Matches.—Protests 505410-37823, etc., of Bernard, Judae & Co. (Chicago). Opinion by McClelland, G. A.

Merchandise classified under paragraph 436, tariff act of 1909, as fancy matches was claimed to be dutiable as friction matches under the same paragraph. Protests sustained in part.

No. 26666.—Apron Leather.—Protests 406777, etc., of Richards, Atkinson & Haserick et al. (Boston). Opinion by McClelland, G. A.

Protests sustained as to apron leather on the authority of United States *v.* Richards (1 Ct. Cust. Appls., 537; T. D. 31548).

No. 26667.—Soap.—Protest 435625 of Los Angeles Soap Co. (Los Angeles). Opinion by McClelland, G. A.

Merchandise classified as soap not specially provided for under paragraph 69, tariff act of 1909, was claimed to be free of duty as soap stock (par. 580). Protest sustained.

No. 26668.—Feather Articles.—Protest 353438-28724 of Gage Bros. & Co. (Chicago). Opinion by McClelland, G. A.

Protest sustained as to feather articles on the authority of United States *v.* Berlinger (167 Fed. Rep., 800; T. D. 29577).

No. 26669.—Mirrors.—Protests 411058, etc., of Strauss Bros. & Co. et al. (New York). Opinion by McClelland, G. A.

Mirrors in leather or paper cases, together with a small comb and in some instances a metal glove button hook and nail pick, were held dutiable as mirrors under paragraph 109, tariff act of 1909, as claimed by the importer. Abstract 22695 (T. D. 30356) followed. Note Abstract 26012 (T. D. 31744).

No. 26670.—Metal Wreaths.—Protest 397836 of F. Blumenthal & Co. (New York). Opinion by McClelland, G. A.

Protests sustained as to metal wreaths on the authority of United States *v.* Downing (1 Ct. Cust. Appls., 337; T. D. 31434).

No. 26671.—Goose Skins with Down.—Protests 359288, etc., of Benjamin Stearns & Co. et al. (New York). Opinion by McClelland, G. A.

Goose skins with the down on, dressed, cleaned, and plucked, were classified under paragraph 425, tariff act of 1897, or paragraph 438, tariff act of 1909, relating to feathers and downs of all kinds. They were claimed to be dutiable as furs dressed on the skin (par. 426, tariff act of 1897, or par. 439, tariff act of 1909). Protests sustained on the authority of Gross *v.* United States (1 Ct. Cust. Appls., 321; T. D. 31410).

No. 26672.—Enfleurage Grease—Essential Oils.—Protests 189847, etc., of E. H. Burr, and protests 307694, etc., of George Lueders & Co. (New York). Opinions by McClelland, G. A.

The board held various commodities to be free of duty under paragraph 626, tariff act of 1897, as enfleurage grease, as claimed by the importers. Burr *v.* United States (1 Ct. Cust. Appls., 126; T. D. 31183) followed.

No. 26673.—Sulphur Colza Oil—Rape-Seed Oil.—Protests 432288, etc., of Larkin Co. (Buffalo).

Merchandise classified as colza or rape-seed oil under paragraph 37, tariff act of 1909, was claimed to be free of duty as soap stock under paragraph 580.

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McCLELLAND, *General Appraiser:* * * * The evidence before us is ample to show that the oil involved is not what is known commercially or practically as colza or rape-seed oil, but what is known as sulphur colza oil pressed or extracted from the cake remaining after the colza oil is expressed, carbonate of sulphur being used in the process of extraction. The evident basis of the protesting company's claim is that this sulphur colza oil is fit only for use in soap making, but there is utter failure to sustain this claim by proof. That it may be used in soap making is not enough. There must be satisfactory proof that it may be practically and profitably used only for that purpose, and therefore, on the record as it stands, we must overrule the protests. * * *

No. 26674.—LUNCHEON BASKETS FITTED WITH UTENSILS.—Protests 481947, etc., of German American Export & Import Co. (New York). Opinion by McClelland, G. A.

The board held that luncheon baskets fitted with utensils were dutiable as manufactures of metal under paragraph 199, tariff act of 1909, as claimed by the importers.

No. 26675.—PROTESTS OVERRULED.—Protests 358339-29003, etc., of Downing, Judae & Co. et al., and protests 439497-33799, etc., of Edson, Keith & Co. et al. (Chicago), and protest 511234 of Alexander Bernheimer, protest 331239 of E. H. Burr, protests 324110, etc., of Euler & Robeson et al., and protests 398396, etc., of Marcel Schmidt et al. (New York). Opinions by McClelland, G. A.

Protests overruled for want of merit.

BEFORE BOARD 2, SEPTEMBER 21, 1911.

No. 26676.—SECURITY BOLTS—AUTOMOBILE PARTS.—Protest 440776 of Dubied Machinery Co. et al. (New York).

FISCHER, *General Appraiser:* In these cases articles classified under paragraph 199, tariff act of 1909, as manufactures of metal, not specially provided for, or under paragraph 141 of said act, as finished parts of automobiles, are claimed to be dutiable under paragraph 144, relating to "bolts * * * of iron or steel." The articles in question are so-called "security bolts" for automobiles and are employed for holding automobile tires firmly in place on the rims of the wheels. The duty assessed, 45 per cent ad valorem, is the rate applicable either under paragraph 199 or 141. The rate claimed, as provided for under paragraph 144, is 1⅛ cents per pound.

The "security bolts" are a specially designed class of bolts for use with pneumatic tires, and in these cases we are concerned with that variety of nickel-plated security bolts only as would fit into a 4 or 4½ inch tire. We are satisfied that these are such as could only commonly, practically, and profitably be used on auto tires, and in the form in which they are imported we believe they afford sufficient evidence as to their special adaptation for such use. Some proof is offered that bolts of this kind might be used on other kinds of vehicles. It is not as we view it persuasive; but even were that shown positively, we would still be of the opinion that paragraph 141 supplies the proper classification for said goods. It is not sufficient to show that such bolts might be used otherwise than on automobiles. Exclusive use is not the test. As was said by Mr. Justice White, in Magone *v.* Wiederer (159 U. S., 559):

> If exclusive use were made the test, then an exception would destroy the rule; for however general and universal the use of a particular article might be, if exceptionally used for another purpose, such use would destroy the effect of the general and common use and make the exception the controlling factor.

We believe there was no error in these assessments and hereby affirm the decision of the collector in each case. The protests are overruled.

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No. 26677.—Drawnwork.—Protest 384378 of Sibley, Lindsay & Curr Co. (Rochester).

Cooper, *General Appraiser:* This protest is directed against the assessment of 60 per cent ad valorem under the provisions of paragraph 349, tariff act of 1909, on flax articles ornamented with drawnwork. It is claimed that the articles are properly dutiable at the rate of 45 per cent ad valorem under paragraph 358 of said act as woven flax articles.

The drawnwork in question is of the so-called "plain" kind referred to in T. D. 31765. It contains no figures formed by the insertion and manipulation of threads foreign to the original fabric, differing in this respect only from the articles the subject of G. A. 7227 (T. D. 31649). In that decision we said:

> It therefore follows that the "fabrics * * * from which threads have been drawn, cut, or punched to produce openwork" describe a distinct species of articles dutiable under the paragraph. It is as distinct as the appliquéed article, as the tamboured article, and as the initialed article. To say that the drawnwork should also be appliquéed, tamboured, or initialed, or scalloped, or have placed thereon or conjoined thereto the other articles mentioned in said paragraph would be a meaningless redundancy, as such articles had already been declared dutiable. Such would be the effect if the words "ornamented or embroidered" related to openwork.

Following this reasoning, we hold the articles in question dutiable under paragraph 349, as assessed.

The protest is overruled and the collector's action affirmed.

No. 26678.—Drawnwork Handkerchiefs.—Protest 390105 of Swayne, Hoyt & Co. (San Francisco).

Cooper, *General Appraiser:* This protest covers flax and cotton handkerchiefs. They were classified under paragraph 349, tariff act of 1909, at the rate of 60 per cent ad valorem under the following provision:

> * * * Handkerchiefs * * * from which threads have been drawn, cut, or punched to produce openwork * * * composed wholly or in chief value of cotton, flax, or other vegetable fiber, * * * and not elsewhere specially provided for in this section, sixty per centum ad valorem.

They are claimed to be properly dutiable under paragraphs 322 and 356, the pertinent portions of which read as follows:

> 322. Handkerchiefs * * * composed of cotton * * * shall pay the same rate of duty on the cloth contained therein as is imposed on cotton cloth of the same description, weight, and count of threads to the square inch * * *. If such handkerchiefs * * * have drawn threads, they shall pay a duty of ten per centum ad valorem in addition to the duty hereinbefore prescribed, and in no case less than fifty-five per centum ad valorem. * * *
>
> 356. Handkerchiefs composed of flax * * *, if * * * with drawn threads, but not embroidered, initialed, or in part of lace, fifty-five per centum ad valorem.

It will thus be seen that there are two *eo nomine* designations for this class of merchandise in the act, and the higher of the two rates would govern were it not for the fact that the provision in paragraph 349 is limited by the phrase "not elsewhere specially provided for." We find these handkerchiefs are specially provided for in paragraphs 322 and 356, and accordingly hold them dutiable thereunder.

The protest is sustained.

No. 26679.—Protests Overruled.—Protests 407683, etc., of R. F. Downing & Co. et al. (New York). Opinion by Cooper, G. A.

Protests overruled for want of merit.

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BEFORE BOARD 3, SEPTEMBER 21, 1911.

No. 26680.—PEA SAUSAGE.—Protest 496759 of S. S. Pierce Co. (Boston).

WAITE, *General Appraiser:* The importation in question is invoiced as "25 cases rolls pea sausage with bacon." According to the record before us these so-called sausages consist of ground pease flavored with bacon, put up in small sausage-shaped paper rolls, securely tied at each end. It is a German manufacture. The printed matter on the label of the package states that this is "pea soup" to be "used for the immediate preparation of excellent pea soup or homemade pease puddings." Then follow directions for making soup from this powder by adding water and boiling. The commodity has been assessed under paragraph 252, tariff act of 1909, as a prepared vegetable. It is claimed to be dutiable under paragraph 251 as pease prepared or preserved, under paragraph 262 as "pease in cartons, papers, or other small packages," or under paragraph 480 as an unenumerated manufactured article.

In the case of Meyer & Lange, G. A. 3637 (T. D. 17498), the Board passed upon pea sausage, which, judging from the description there given, is the same article as now before us. The merchandise was held in that case to be dutiable as a manufactured article not enumerated or specially provided for. On authority of decision cited, we sustain the claim in the protest for the assessment of duty at 20 per cent ad valorem under paragraph 480, the collector being instructed to reliquidate accordingly.

No. 26681.—ARTISTIC ANTIQUITIES—FURNITURE—CHINAWARE.—Protests 503998, etc., of Davies, Turner & Co., and protest 438133 of Dudley L. Pickman (Boston), and protest 518229 of M. Cowles (New York). Opinions by Waite, G. A.

Various articles of furniture and chinaware were held free of duty under paragraph 717, tariff act of 1909, as artistic antiquities, as claimed by the importers.

No. 26682.—COMMISSIONS.—Protest 420853-3509 of Leon Fellman (New Orleans).

WAITE, *General Appraiser:* This is a protest against the assessment of duty on an item of commissions which has been included by the appraiser in the dutiable value of the goods, and which the importers claim was paid to their purchasing agent and is therefore not dutiable. It appears from the face of the invoice that the goods were bought from L. Hecht & Co., while the same people sign the declaration indorsed upon the invoice as "agent of the purchaser." We think it fairly appears from the testimony, however, that these people were commissionaires and acted in that capacity for the importers in this case, and that the 5 per cent commission was paid to them as commissions. Considering the item a purchasing agent's commission, it is no part of the foreign market value of the merchandise and is not properly dutiable. United States *v.* Herrman (91 Fed. Rep., 116); United States *v.* Kenworthy (68 Fed. Rep., 904), and numerous decisions of the board. This amount was not included by the importers in the entered value of their goods, being deducted on the face of the entry from the gross amount of the invoice.

There is no intimation anywhere in the papers that the appraiser considered the addition of this amount necessary to make foreign market value, but the item was made dutiable, as appears from that officer's testimony taken at the hearing before the board, because of the discrepancy appearing in the papers that Hecht & Co. were both the sellers and the agents of the purchasers, and that as sellers they were not entitled to commissions on the sale of their own merchandise; the appraiser further states in his testimony, however, that information since received convinces him that Hecht & Co. are bona fide commissionaires for the importers, and had the invoices been properly made out he would have allowed the 5 per cent deduction. The only further point involved in this case, therefore, is as to whether the form in which the invoice has been made out is incorrect, justifying the assessment of duty for such

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reason upon the disputed item. A similar situation arose in the case of *Re* Smith G. A. 5443 (T. D. 24721), which contains an elaborate discussion by the board of the points involved. This decision was affirmed by the Circuit Court in United States *v.* Smith (132 Fed. Rep., 1007; T. D. 25394).

We are satisfied from the evidence in the case that Hecht & Co. acted as commissionaires for the purchaser, and the item of 5 per cent is therefore not dutiable, not being in any way connected with the wholesale market price of the goods where they were purchased. The protest is therefore sustained.

No. 26683.—Palm Nuts—Pandanus Seeds.—Protest 457394 of Maltus & Ware (New York).

Merchandise invoiced as *pandanus utilis* seeds was classified under paragraph 266, tariff act of 1909, as seeds not specially provided for, and was claimed to be free of duty as palm nuts or palm-nut kernels (par. 635).

Waite, *General Appraiser:* * * * The evidence seems to disclose that this commodity has been known for some time in the commercial world as palm seeds. It appears to be the seeds of a species of pine, sometimes called the "screw pine," and is in no sense the product of the palm tree. Just what is intended be covered by the term "palm nut" in the statute we are unable to determine, and there has been no testimony or evidence to enlighten us upon that point. The record does not disclose that the term "palm nut" is used in the commercial world. We have passed upon this same commodity in two previous cases (Abstract 2246; T. D. 25482, and Abstract 9136; T. D. 26875), where the records were as meager, apparently, as in this case. In both instances we have reached the conclusion reached here and declined to hold the commodity free under the provision for palm nuts. We no not think it is in any true sense a nut. It consists of a thick fibrous covering, containing in its inner parts a number of small orifices in which the germinating portion of the seed is found. Following the decisions heretofore made, we overrule the protest. * * *

No. 26684.—Protests Overruled.—Protest 490483 of Theodore H. Diener & Co. (Baltimore), protests 497088, etc., of American Express Co. (Boston), protest 500800–37599 of G. W. Sheldon & Co. (Chicago), protests 491012, etc., of Reiss & Brady (New York), and protests 396222, etc., of S. E. Bragg (San Diego). Opinions by Waite, G. A.

Protests overruled for want of merit.

No. 26685.—Protests Overruled.—Protests 408700, etc., of Samuel Ach Co. et al. (Cincinnati), protests 407755, etc., of D. Baird & Son (Louisville), and protests 409454, etc., of Blumenfeld, Locher & Brown Co. (Milwaukee). Opinions by Hay, G. A.

Protests overruled for want of merit.

No. 26686.—Protests Abandoned.—Protest 560892 of Buffalo, Lockport & Rochester Transit Co. (Niagara Falls).

Protest abandoned.

Before Board 1, September 22, 1911.

No. 26687.—Toy Bracelets.—Protest 477514–36473 of G. W. Sheldon & Co. (Chicago). Opinion by Sharretts, G. A.

Bracelets composed of collodion were held dutiable as toys under paragraph 431, tariff act of 1909, as claimed by the importers, rather than as jewelry (par. 448), as assessed.

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No. 26688.—Leather Shoes.—Protests 419834, etc., of Kwong Tai Chong et al. (New York).

McClelland, *General Appraiser:* The merchandise which is the subject of these protests consists of leather shoes. They were assessed with duty at the rate of 15 per cent ad valorem under the provisions of paragraph 451 of the tariff act of 1909 and are claimed to be subject to duty only at the rate of 10 per cent ad valorem under the proviso in paragraph 450 of said act.

When the cases were called for hearing, they were submitted for decision upon the following stipulation:

It is stipulated by and between counsel for the importers and the Government that the shoes subject of these protests, returned as leather chief value, are composed of leather of the bovine species.

All of the shoes in question were imported prior to the 1st day of October, 1909, and the only question involved therefore is whether the date limitation contained in the *proviso* of paragraph 450 applies to boots and shoes wholly or in chief value of leather made from cattle hides or cattle of the bovine species imported prior to that date.

In G. A. 6986 (T. D. 30381) in passing upon harness in chief value of leather involving a similar question the board said:

It was manifestly the intent of the framers of the paragraph that the date should apply to each of the provisions in the paragraph following the proviso. Therefore, the harness in question, having been imported prior to October 1, 1909, is subject to the rate of duty fixed upon harness in paragraph 461 of said act.

In harmony therewith each of these protests must be overruled and the decision of the collector is affirmed in each case.

Before Board 2, September 22, 1911.

No. 26689.—Cotton and Flax Towels—Chief Value.—Protests 420917, etc., of Henry Glass & Co. (New York).

Towels classified under paragraph 346, tariff act of 1897, and paragraph 357, tariff act of 1909, as flax articles were claimed to be dutiable as manufactures of cotton (par. 322, tariff act of 1897, and par. 332, tariff act of 1909).

Cooper, *General Appraiser:* * * * The issue involved in these cases is whether cotton or flax is the component material of chief value of certain towels imported from Germany. The merchandise is indicated on the invoices as qualities 60, 66, and 70. * * * The classification and collection of duty made by the collector is presumed to be correct and the burden devolves upon the protestants to prove by a preponderance of evidence that the classification and collection was not correct. In this case two witnesses testified, one by deposition, at the instance of the importers, who it appears was the business manager of the factory where the goods were manufactured; the other at the instance of the Government, who was then in the service of the Government as analyst in the appraiser's department at New York. The testimony is conflicting and we find it difficult to harmonize and reconcile it. The testimony of the importers' witness is definite and certain and on its face carries no cause for the belief that it was false or erroneous. While the testimony of the witness for the Government is free from the suspicion of bias or partiality, nevertheless it is faulty in definiteness and certainty and standing alone raises a doubt as to the correctness of the action of the officer that assessed and collected the duties on the merchandise under protest. The testimony of the witness for the importers, standing alone, clearly contravenes the correctness of the assessment and collection made. It being a question of fact only involved in this case, we find and decide that the component material of chief value in the merchandise in question is cotton. The protests are therefore sustained.

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BEFORE BOARD 3, SEPTEMBER 22, 1911.

No. 26690.—RIB-GRASS SEED.—Protest 493736 of C. C. Morse & Co. (San Francisco).

The merchandise consisting of rib-grass seeds was classified as seeds not specially provided for, under paragraph 266, tariff act of 1909, and was claimed to be free of duty as "all flower and grass seeds" (par. 668).

WAITE, *General Appraiser:* * * * The testimony shows that this is the seed of what is known as rib grass (*Plantago lanceolata*). It belongs to the plantain family. The testimony also shows that it is considered in the commercial world, to wit, by seedmen, as a grass, and is catalogued among the grass or forage seeds, with clover, timothy, meadow grass, red top, etc., the same as vetch, spurry, and sanfoin. It does not belong among the true grasses, but the board had not construed this paragraph as covering only the true grasses, but rather those plants which are used for forage or feed purposes. This is the first importation of this seed that has been called to the attention of the board, so far as the records disclose. Its use, however, is the same as that of vetch and spurry, and the principles upon which we think the case should be decided are set forth in Willett's case, G. A. 6350 (T. D. 27306), wherein vetch seed was the subject under discussion. Following the principles and rules laid down in that case, we sustain the protest.

No. 26691.—ARTISTIC ANTIQUITIES.—Protests 421079, etc., of United States Express Co. (New York). Opinion by Waite, G. A.

Protests overruled for noncompliance with the regulations of the Secretary of the Treasury.

Decisions on Applications for Rehearings.

No. 26692.—REHEARING DENIED.—Application by the protestants for rehearing on protest 489707-36489 (Chicago) of Pitkin & Brooks, decided July 25, 1911, Abstract 26209 (T. D. 31788). No. 336. Before Board 3, September 5, 1911.

Application denied.

No. 26693.—REHEARING DENIED.—Application by the protestants for rehearing on protests 505585, etc. (Boston), of Millenium Food Co. et al., decided August 17, 1911, Abstract 26382 (T. D. 31832). No. 330. Before Board 3, September 6, 1911.

Application denied.

No. 26694.—REHEARING GRANTED—MEDICINAL PREPARATION.—Application by the protestants for rehearing on protest 486632 (Philadelphia) of Powers-Weightman-Rosengarten Co., decided August 9, 1911, Abstract 26271 (T. D. 31813). No. 342. Before Board 1, September 7, 1911.

Application granted. Merchandise classified as an alcoholic chemical compound under paragraph 3, tariff act of 1909, is claimed to be a nonalcoholic medicinal preparation (par. 65).

No. 26695.—MOTION TO SET ASIDE JUDGMENT.—Motion by the protestants to set aside judgment on protest 402088 (Boston) of Joseph Breck & Sons, decided September 15, 1910, Abstract 23956 (T. D. 30934). No. 352. Before Board 3, September 11, 1911.

Motion denied.

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No. 26696.—Rehearing Granted—Coverings.—Application by the protestants for rehearing on protests 401047, etc. (Philadelphia), of J. J. Buchey & Co. et al., decided August 12, 1911, Abstract 26335 (T. D. 31813). No. 327. Before Board 3, September 12, 1911.

Application granted. Certain coverings are claimed to be the usual containers of merchandise free of duty or subject to specific duty and therefore nondutiable.

No. 26697.—Rehearing Denied.—Application by the Government for rehearing on protest 465893 (St. Louis) of C. H. Wyman & Co., decided August 17, 1911, Abstract 26392 (T. D. 31832). No. 340. Before Board 3, September 12, 1911.

Application denied.

No. 26698.—Rehearing Granted—Fish.—Application by the protestant for rehearing on protest 495989 (Port Townsend) of Y. Fukui, decided August 11, 1911, Abstract 26328 (T. D. 31813). No. 345. Before Board 1, September 12, 1911.

Application granted. Merchandise classified as fish in packages containing less than one-half barrel, under paragraph 270, tariff act of 1909, is claimed to be dutiable as "fish, * * * smoked, dried, * * * or otherwise prepared * * * " (par. 273), or as "fish, skinned or boned * * * ". (par. 273).

No. 26699.—Rehearing Denied.—Application by the Government for rehearing on protests 477260, etc. (New York), of J. G. Rettig et al., decided August 17, 1911, Abstract 26388 (T. D. 31832). No. 339. Before Board 3, September 16, 1911.

Application denied.

No. 26700.—Rehearing Granted—Coverings.—Application by the protestants for rehearing on protest 421574-32499 (Chicago) of International Forwarding Co., decided August 12, 1911, Abstract 26335 (T. D. 31813). No. 341. Before Board 3, September 18, 1911.

Application granted. Certain coverings are claimed to be the usual containers of merchandise free of duty or subject to specific duty and therefore nondutiable.

No. 26701.—Rehearing Granted—Coverings.—Application by the protestants for rehearing on protests 417501, etc. (New York), of M. D. Howell & Co., decided August 12, 1911, Abstract 26335 (T. D. 31813). No. 346. Before Board 3, September 18, 1911.

Application granted. Certain coverings are claimed to be the usual containers of merchandise free of duty or subject to specific duty and therefore nondutiable.

No. 26702.—Rehearing Granted—Jewelry.—Application by the protestants for rehearing on protest 474530-36345 (Chicago) of Marshall Field & Co., decided September 1, 1911, Abstract 26458 (T. D. 31845). No. 358. Before Board 1, September 19, 1911.

Application granted. Brooches, necklaces, and pins classified as articles of personal adornment under paragraph 448, tariff act of 1909, are claimed among other things to be dutiable as jewelry under the same paragraph or as manufactures of glass or paste (par. 109).

No. 26703.—Rehearing Denied.—Application by the protestants for rehearing on protest 431051 (New York) of A. H. Ogden & Co., decided July 26, 1911, Abstract 26215 (T. D. 31788). No. 333. Before Board 2, September 19, 1911.

Application denied.

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(T. D. 31884.)

Wood pulp—Printing paper.

Extension of the period for the taking effect of T. D. 31783, relating to the assessment of duties on wood pulp and printing paper produced from wood cut on the Crown lands in Newfoundland.

TREASURY DEPARTMENT, *September 25, 1911.*

To collectors of customs and others concerned:

The period of 30 days limited for the taking effect of T. D. 31783 of July 29, 1911, relative to the assessment of duties on wood pulp and printing paper produced from wood cut on Crown lands in Newfoundland is hereby extended so that the said decision will take effect on October 29, 1911.

You are hereby authorized to reliquidate accordingly all entries heretofore liquidated where legal protest has been filed or the time for the filing of such protests has not expired.

JAMES F. CURTIS, *Assistant Secretary.*

(T. D. 31885.)

Classification of thin papers.

Classification of various thin papers weighing under 10 pounds per ream of 480 sheets, each 20 by 30 inches.

TREASURY DEPARTMENT, *September 27, 1911.*

SIR: The department duly received your letter of May 25 last relative to the proper classification of various thin papers weighing under 10 pounds per ream of 480 sheets, each 20 by 30 inches, represented by the samples submitted and described as follows:

A. Imitation parchment or grease-proof paper, supercalendered and transparent.

B. Kraft wrapping paper, glazed on one side.

C. Carbon duplicating paper.

D. Coated litho transfer.

E. Onionskin and imitation onionskin.

F. Manifold.

G. Diamond.

You state that papers represented by these samples when weighing under 10 pounds per ream are assessed with duty as tissue paper, and when weighing 10 pounds per ream or over are assessed with duty as follows:

A. Paragraph 411, 2 cents per pound and 10 per cent as grease-proof paper.

B. Paragraph 415, 35 per cent as wrapping paper n. s. p. f.

C. Paragraph 411, 5 cents per pound as coated paper.

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D. Paragraph 411, 5 cents per pound as coated paper.
E. Paragraph 415, 30 per cent as paper n. s. p. f.
F. Paragraph 415, 30 per cent as paper n. s. p. f.
G. Paragraph 415, 30 per cent as paper n. s. p. f.

In inviting attention to the Standard Dictionary, which defines tissue paper as "very thin, unsized, almost transparent paper, for wrapping delicate articles, protecting engravings, etc.; so called originally not from its texture, but from its use in separating the folds of fine silk tissue," you express the opinion that the samples submitted, are not generally or commonly known as tissue papers, and that the separate provision of the tariff for tissue paper would seem to indicate that some thin papers at least, notably imitation parchment or grease-proof papers (Exhibit A), are more specifically provided for under tariff provisions other than as tissue paper.

The department concurs in the views expressed by you that thin paper weighing under 10 pounds per ream of 480 sheets, each sheet 20 by 30 inches, which is specifically provided for under particular designations other than tissue, is not dutiable as tissue paper, but should be assessed with duty under the appropriate paragraphs of the tariff act for such paper. And in reply to your request for instructions as to the classification of paper similar to the samples submitted, I have to advise you that in the opinion of the department the so-called white parchment tissue represented by Exhibit A is properly dutiable, under paragraph 411 of the tariff act, at the rate of 2 cents per pound and 10 per cent ad valorem; sample B, under paragraph 415 of the tariff act, at the rate of 35 per cent ad valorem as wrapping paper not specially provided for; samples C and D as coated paper, under paragraph 411 of the tariff act, at the rate of 5 cents per pound.

The department is further of the opinion, after careful consideration of this question, that paper represented by samples E, F, and G is properly dutiable as tissue paper under paragraph 410 of the said act.

Respectfully, JAMES F. CURTIS,
(88552.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 31886.)

Manifests.

The practice of recording manifests of importing vessels in full discontinued. An abstract from the manifest alphabetically indexed will be kept.—Catalogue Form 3477 discontinued.

TREASURY DEPARTMENT, *September 27, 1911.*

SIR: Referring to the department's letter of July 18 last, relative to the discontinuance at your port of the recording of manifests in

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Catalogue No. 3477, I have to advise you that the practice of recording such manifests in full may be discontinued. In the future you will keep only such record as may be necessary and will permit manifests to be readily located in your files.

This record should be kept in the nature of an abstract from the manifests and alphabetically indexed. The manifests should be properly folded, briefed, and filed in a convenient way so that they may be promptly located when information contained therein is desired.

Form Catalogue No. 3477 is hereby discontinued.

Respectfully, JAMES F. CURTIS,
(69708.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Newport News, Va.*

(T. D. 31887.)

Drawback on handbags.

Drawback on handbags manufactured by P. W. Lambert & Co., of New York City, with the use of imported Gobelin tapestry panels.

TREASURY DEPARTMENT, *September 27, 1911.*

SIR: Drawback is hereby allowed under section 25 of the tariff act of August 5, 1909, and the regulations promulgated thereunder (T. D. 31695 of June 16, 1911), on handbags manufactured by P. W. Lambert & Co., of New York City, with the use of imported Gobelin tapestry panels.

A manufacturing record shall be kept showing the date of manufacture, the number of dozen bags manufactured, the style number of each bag, and the number of imported tapestry panels used, giving in detail the style and size thereof. A sworn abstract from this record shall be filed with each drawback entry.

The allowance may equal the quantity used as shown by the abstract from the manufacturing record.

The manufacturers' sworn statement, dated September 7, 1911, is inclosed herewith for filing in your office.

Respectfully, JAMES F. CURTIS,
(61688.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 31888.)

Reimportations.

Duty being collected on original importation of foreign cans used in the transportation of milk or cream, such cans admitted free on reimportation.

TREASURY DEPARTMENT, *September 28, 1911.*

SIR: The department is in receipt of your letter of the 12th ultimo, in relation to the free admission upon subsequent importation of cans

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containing cream or milk upon which cans duties were collected on original importation.

In reply, I have to advise you that in the case of cans of foreign manufacture used in the transportation of cream or milk upon which duties were assessed on original importation and which are shipped abroad with the intention of returning immediately to this country filled with cream or milk, the department is of the opinion that such shipment abroad with the intention of returning immediately to the United States does not constitute an exportation within the meaning of the customs laws, and that such cans upon return to the United States filled with cream or milk should be passed free of duty as a nonimportation, upon the identity of the cans being established. You will therefore collect duty upon such cans on original importation and pass the same free of duty on each subsequent return to the United States when used for the purpose stated. Such cans, however, should be permanently marked either with a metal plate, or otherwise, in such a manner that the cans may be readily identified upon subsequent return to this country.

Respectfully, JAMES F. CURTIS,
(90716.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *Cleveland, Ohio.*

(T. D. 31889.)

Drawback on hardware.

Drawback on hardware manufactured by the Stanley Works, of New York City and New Britain, Conn., with the use of imported steel billets.

TREASURY DEPARTMENT, *September 28, 1911.*

SIR: Drawback is hereby allowed under section 25 of the tariff act of August 5, 1909, and the regulations promulgated thereunder (T. D. 31695 of June 16, 1911), on hardware manufactured by the Stanley Works, of New York City and New Britain, Conn., with the use of imported steel billets.

The allowance, including wastage, shall not exceed that shown in the sworn statement and schedules dated July 5, 1911, transmitted herewith for filing in your office.

Respectfully, JAMES F. CURTIS,
(1104.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 31890.)

Wood pulp—Paper.

Paragraphs 7 and 8 of T. D. 31772, relative to entry of wood pulp, paper, and paper board, the products of Canada, modified.

TREASURY DEPARTMENT, *September 29, 1911.*

To collectors of customs and others concerned:

Chapter 10 of 1 George V, 1911, of the acts of the legislature of the Province of New Brunswick, entitled "An act respecting the manufacture of spruce and other pulp woods cut on Crown lands," passed April 13, 1911, provides in part that—

> Every timber license or permit conferring authority to cut spruce or other softwood trees or timber, not being pine or poplar, suitable for manufacturing pulp or paper, on the ungranted lands of the Crown, shall contain and be subject to the condition that all such timber cut under the authority or permission of such license or permit, shall be manufactured in Canada.

Under date of August 8, 1911, the surveyor general of the Province of New Brunswick stated that it was the custom of the Crown lands department to renew timber licenses annually on the 1st day of August of each year, or as soon thereafter as mileage and stumpage pertaining to each license is paid, and he further ruled that the statute does not apply to licenses renewed on the 1st of August, 1911, or prior to the 1st day of October, 1911. In view of this construction of the provisions of the act by the duly constituted authorities of the Province of New Brunswick, paragraphs 7 and 8 of T. D. 31772 (Cir. 48) of July 26, 1911, are hereby modified to read as follows:

7. Subject to compliance with the regulations herein set forth, free entry will be granted to paper and paper board valued at not more than 4 cents per pound, and to wood pulp manufactured from:

(*a*) Wood cut on any lands, public or private, in any of the Provinces or Territories of the Dominion of Canada, except the Provinces of British Columbia, New Brunswick, Ontario, and Quebec.

(*b*) Wood cut on private lands in the Provinces of British Columbia, New Brunswick, Ontario, and Quebec.

(*c*) Wood cut on the provincial lands of the Province of British Columbia lying east of the Cascade Range of mountains.

(*d*) Wood cut on Crown lands of the Province of New Brunswick, under authority of licenses or permits issued prior to October 1, 1911, whether such licenses shall have been issued for the first time or in renewal.

(*e*) Pine or poplar cut on either Crown lands or private lands in the Province of New Brunswick.

8. Free entry will be denied to such wood pulp, paper, and paper board manufactured from:

(*a*) Wood cut on the Crown lands of the Provinces of Ontario and Quebec, or on the provincial lands of the Province of British Columbia lying west of the Cascade Range of mountains.

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(*b*) Wood, other than pine or poplar, cut on the Crown lands of the Province of New Brunswick, under authority of licenses or permits issued on or after October 1, 1911, whether such licenses shall have been issued for the first time or in renewal.

The Secretary of State has been requested to bring these modified instructions to the attention of the consular officers concerned for their information in connection with the specific verification of the exporter's declaration of origin which they are required to make on invoices.

JAMES F. CURTIS, *Assistant Secretary.*

(T. D. 31891.)

Crushed stone.

Stone crushed by machinery and screened to size desired, free of duty under paragraph 626, tariff act of 1909.

TREASURY DEPARTMENT, *September 29, 1911.*

SIR: The Auditor for the Treasury Department invites attention to entries Nos. 2055 and 2056, covering certain stone which you stated in a letter addressed to the auditor was crushed by machinery, screened to a size, and used for making an abutment at the American end of the Michigan Central Railroad bridge.

You assessed duty upon this crushed stone under paragraph 480 of the tariff act at the rate of 20 per cent ad valorem, citing as your authority the decision of the United States Court of Customs Appeals (T. D. 31321) wherein it was held that certain granito or terrazzo was dutiable under the said paragraph.

In this regard I have to advise you that in the opinion of the department the decision cited has no application to crushed stone. I have further to advise you, however, that the department concurs in the decision of the Board of United States General Appraisers of February 4, 1904, G. A. 5573 (T. D. 24988), in which the board refers to previous decisions wherein it held that stone which had simply been crushed by machinery or otherwise was not a manufactured article, but was free of duty as a mineral crude or not advanced in value or condition by refining or grinding or by other process of manufacture.

You are accordingly directed to admit free of duty as a crude mineral substance under paragraph 626 of the tariff act of August 5, 1909, future importations of crushed stone similar in character to that covered by the entries mentioned.

Respectfully, JAMES F. CURTIS,
(23500.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Niagara Falls, N. Y.*

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(T. D. 31892.)

Drawback on metal alloy.

Drawback on metal alloy manufactured by the Leddell Biglow Co. of New York, with the use of imported tin, antimony, and lead.

TREASURY DEPARTMENT, *September 30, 1911.*

SIR: Drawback is hereby allowed under section 25 of the tariff act of August 5, 1909, and the regulations promulgated thereunder (T. D. 31695 of June 16, 1911), on metal alloy manufactured by the Leddell Biglow Co., of New York, with the use of imported tin, antimony, and lead.

There shall be filed with each drawback entry an abstract from the manufacturing records showing the quantity of each kind of imported metal used and the wastage.

The allowance shall not exceed the quantities of imported materials used as shown by the sworn abstract.

The manufacturers' sworn statement, dated July 7, 1911, is transmitted herewith for filing in your office.

Respectfully, JAMES F. CURTIS,
(63422.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 31893.)

Values of foreign coins.

[Circular No. 58.]

TREASURY DEPARTMENT, *October 1, 1911.*

In pursuance of the provisions of section 25 of the act of August 27, 1894, I hereby proclaim the following estimate by the Director of the Mint of the values of foreign coins to be the values of such coins in terms of the money of account of the United States, to be followed in estimating the value of all foreign merchandise exported to the United States during the quarter beginning October 1, 1911, expressed in any such metallic currencies.

Entries of merchandise liquidated upon the values proclaimed herein will be subject to reliquidation upon the order of the Secretary of the Treasury whenever satisfactory evidence shall be produced to him showing that the values in United States currency of the foreign money specified in the invoices were at the date of certification at least 10 per cent more or less than the values herein proclaimed.

JAMES F. CURTIS, *Acting Secretary.*

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Estimate by Director of Mint of the Values of Foreign Coins.

Countries.	Legal standard.	Monetary unit.	Value in terms of U. S. money.	Remarks.[1]
Argentine Republic	Gold	Peso	$0.965	Currency: Depreciated paper, convertible at 44 per cent of face value.
Austria-Hungary	Gold	Crown	.203	
Belgium	Gold and silver.	Franc	.193	Member of Latin Union; gold is the actual standard.
Bolivia	Gold	Boliviano	.389	12½ bolivianos equal 1 pound sterling.
Brazil	Gold	Milreis	.546	Currency: Inconvertible paper; exchange rate, approximately, $0.3245.
British Colonies in Australasia and Africa.	Gold	Pound sterling	4.8665	
Canada	Gold	Dollar	1.000	
Central American States:				
Costa Rica	Gold	Colon	.465	
British Honduras	Gold	Dollar	1.000	
Guatemala, Honduras, Nicaragua, Salvador	Silver	Peso	.388	Currency: Inconvertible paper, much depreciated and subject to wide fluctuations.
Chile	Gold	Peso	.365	Currency: Inconvertible paper; exchange rate, approximately, $0.2156.
China	Silver	Tael: Amoy	.629	
		Tael: Canton	.627	
		Tael: Cheefoo	.601	
		Tael: Chin Kiang	.614	
		Tael: Fuchau	.581	
		Tael: Haikwan (Customs).	.640	
		Tael: Hankow	.588	
		Tael: Kiaochow	.609	
		Tael: Nankin	.622	
		Tael: Niuchwang	.589	
		Tael: Ningpo	.604	
		Tael: Peking	.613	
		Tael: Shanghai	.574	
		Tael: Swatow	.581	
		Tael: Takau	.633	
		Tael: Tientsin	.609	
		Dollar: Hongkong	.413	
		Dollar: British	.413	
		Dollar: Mexican	.416	
Colombia	Gold	Dollar	1.000	Currency: Inconvertible paper; exchange rate, approximately, $100 paper to $1 gold.
Denmark	Gold	Crown	.268	
Ecuador	Gold	Sucre	.487	
Egypt	Gold	Pound (100 piasters)	4.943	The actual standard is the British pound sterling, which is legal tender for 97½ piasters.
Finland	Gold	Mark	.193	
France	Gold and silver.	Franc	.193	Member of Latin Union; gold is the actual standard.
German Empire	Gold	Mark	.238	
Great Britain	Gold	Pound sterling	4.8665	
Greece	Gold and silver.	Drachma	.193	Member of Latin Union; gold is the actual standard.
Haiti	Gold	Gourde	.965	Currency: Inconvertible paper; exchange rate, approximately, $0.238.
India (British)	Gold	Rupee	.32⅓	(15 rupees equal 1 pound sterling.)
Italy	Gold and silver.	Lira	.193	Member of Latin Union; gold is the actual standard.
Japan	Gold	Yen	.498	
Liberia	Gold	Dollar	1.000	Currency: Depreciated silver token coins. Customs duties are collected in gold.
Mexico	Gold	Peso	.498	

[1] The exchange rates shown under this heading are recent quotations and given as an indication of the values of currencies which are fluctuating in their relation to the legal standard. They are not to take the place of the consular certificate where it is available.

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ESTIMATE BY DIRECTOR OF MINT OF THE VALUES OF FOREIGN COINS—Continued.

Countries.	Legal standard.	Monetary unit.	Value in terms of U. S. money.	Remarks.
Netherlands	Gold	Florin	$0.402	
Newfoundland	Gold	Dollar	1.014	
Norway	Gold	Crown	.268	
Panama	Gold	Balboa	1.000	
Persia	Gold and silver.	Kran	.1704	This is the value of the gold kran. Currency is silver circulating above its metallic value; exchange value of silver kran, approximately, $0.0896.
Peru	Gold	Libra	4.8665	
Philippine Islands	Gold	Peso	.500	
Portugal	Gold	Milreis	1.080	Currency: Inconvertible paper; exchange rate, approximately, $0.9973.
Roumania	Gold	Leu	.193	
Russia	Gold	Ruble	.515	
Santo Domingo	Gold	Dollar	1.000	
Servia	Gold	Dinar	.193	
Siam	Gold	Tical	.3708	
Spain	Gold and silver.	Peseta	.193	Valuation is for the gold peseta; currency is silver circulating above its metallic value; exchange value, approximately, $0.1794.
Straits Settlements	Gold	Dollar	.5677	
Sweden	Gold	Crown	.268	
Switzerland	Gold	Franc	.193	Member of Latin Union; gold is the actual standard.
Turkey	Gold	Piaster	.044	
Uruguay	Gold	Peso	1.034	
Venezuela	Gold	Bolivar	.193	

(T. D. 31894.)

Shark fins.

Shark fins dutiable as "fish, skinned or boned," at the rate of 1¼ cents per pound under paragraph 273, tariff act of 1909.

TREASURY DEPARTMENT, *October 2, 1911.*

SIR: I have to acknowledge the receipt of your letter of July 20, 1911, with reference to the classification of shark fins, wherein you state that it is your practice to classify such merchandise as dutiable at the rate of three-fourths of 1 cent per pound under paragraph 273 of the tariff act of 1909.

You also express the opinion, however, that the contention of the special agent at San Francisco that the merchandise is properly dutiable at 1¼ cents per pound under the same paragraph as "fish, skinned or boned," is correct, inasmuch as G. A. 297 (T. D. 10744), which is apparently the basis for the present practice, does not appear to be applicable in view of the provision for "fish, skinned or boned," which did not appear in the tariff act of October 1, 1890, under which the said decision was rendered.

It appears that the fins are cut from the shark and are boiled, skinned, and prepared for market by drying or preserving, and the

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department concurs in the opinion expressed that the merchandise is properly dutiable as "fish, skinned or boned," and you are accordingly directed, 30 days from the date hereof, to assess duty upon shark fins at the rate of 1¼ cents per pound, under the said paragraph 273 of the tariff act of 1909.

Respectfully, JAMES F. CURTIS,
(86319.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 31895—G. A. 7277.)

Tops for hatpins.

Imitation precious stones, composed of glass or paste, faceted, intended for use as tops for hatpins, are suitable for use in the manufacture of jewelry and dutiable at 20 per cent ad valorem under paragraph 449, tariff act of 1909, as imitation precious stones.

United States General Appraisers, New York, September 27, 1911.

In the matter of protest 498683-36784 of American Shipping Co. against the assessment of duty by the collector of customs at the port of Chicago.

Before Board 1 (SHARRETTS, MCCLELLAND, and CHAMBERLAIN, General Appraisers).

SHARRETTS, *General Appraiser:* The articles covered by this protest are imitation precious stones composed of glass or paste, intended for use in the manufacture of hatpins. Duty was assessed thereon at 45 per cent ad valorem under paragraph 109 of the tariff act of 1909, the importers claiming that the merchandise is properly dutiable as imitation precious stones at 20 per cent ad valorem under paragraph 449 of said act. In an advisory report to the collector relative to the classification for duty of these articles the appraiser reports:

In view of the principles enunciated in T. D. 30934 (Abstract 23957), where hatpins with heads of imitation precious stones faceted were held to be dutiable as manufactures of glass or paste, return for duty was made under paragraph 109 at 45 per cent ad valorem. These hatpin heads are not parts of jewelry and are not used in the manufacture of jewelry, consequently are not dutiable under paragraph 449, as claimed.

In G. A. 6139 (T. D. 26679), affirmed by the Circuit Court for the Southern District of New York in T. D. 27397 (suits 4102–4107), this board, in passing upon the dutiability of hatpins, separated them into two classes. The first, which were held to be jewelry, embraced such as were set with paste (imitation precious stones), the heads being ornamented with metal bands, scroll work, or other ornamental metal designs. The second class included hatpins with plain round and faceted paste heads imitating precious stones not set in metal, orna-

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mented or decorated. Following the decision of the court in the case of United States *v.* Schiff (139 Fed. Rep., 549; T. D. 26492), the second class were held not to be jewelry. Abstract 23957, cited by the appraiser, had reference to hatpins similar to those embraced in class 2 of G. A. 6139, *supra*.

The imitation precious stones in question can be and have for years been used indiscriminately in the manufacture of both classes of goods. It is impossible to determine with any degree of certainty whether any imitation precious stones are to be made into jewelry or cheaper articles not so known. We find, however, that they belong to a well-recognized class of goods known as imitation precious stones, and that they are suitable for use in the manufacture of jewelry, such use being general and material and not merely incidental. We accordingly sustain the claim in the protest that the merchandise is dutiable at 20 per cent ad valorem under paragraph 449 of the act of 1909, the collector's decision being reversed.

(T. D. 31896—G. A. 7278.)

Jewelry—Necklace clasps.

A platinum clasp for a necklace, set with a genuine pearl and rose diamonds, is dutiable as "all articles commonly or commercially known as jewelry, or parts thereof, * * * composed of * * * platinum, whether set or not set with diamonds, pearls," etc., under paragraph 448, tariff act of 1909, and not as "snap fasteners, or clasps, or parts thereof, by whatever name known," under paragraph 427 of said act.

United States General Appraisers, New York, September 27, 1911.

In the matter of protest 470521-36068 of G. W. Sheldon & Co. against the assessment of duty by the collector of customs at the port of Chicago.

Before Board 1 (SHARRETTS, McCLELLAND, and CHAMBERLAIN, General Appraisers).

SHARRETTS, *General Appraiser:* The merchandise covered by this protest is a platinum clasp for a necklace, set with a genuine pearl and rose diamonds. It was assessed with duty at 60 per cent ad valorem under the provision in paragraph 448 of the tariff act of 1909 for "all articles commonly or commercially known as jewelry or parts thereof, * * * composed of gold or platinum, set with diamonds, pearls," etc.

The importers claim that duty should have been assessed on this article at the rate of 50 per cent ad valorem under paragraph 427 of said act, which provides for "snap fasteners, or clasps, or parts thereof, by whatever name known."

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A provision for "clasps, by whatever name known," standing alone, would seem to be more specific than that for "jewelry," but where the word "clasps" is coupled with and probably intended to be synonymous with "snap fasteners," and is included in a paragraph devoted wholly to buttons or parts of buttons, we must presume that the snap fasteners or clasps provided for therein are in the nature of, or serve the same purpose or use as, buttons commonly used on gloves and shoes. All of the enumerated articles in paragraph 427 are intended for utilitarian purposes, while the clasp in question is a part of a necklace intended to adorn the person, serving no useful purpose, and is not *ejusdem generis* with the articles specified in paragraph 427.

We find the merchandise in question is a part of a necklace, commonly or commercially known as jewelry, composed of platinum and set with precious stones, and hold that it is more specifically provided for in paragraph 448 than in paragraph 427 of said act.

The protest is accordingly overruled, the collector's decision being affirmed.

(T. D. 31897—G. A. 7279.)

Toy magic-lantern slides.

Glass slides for use with toy magic lanterns are not dutiable at 45 per cent ad valorem as "glass slides for magic lanterns" under paragraph 107, tariff act of 1909, but are dutiable at 35 per cent ad valorem as "parts of toys" under paragraph 431 of said act.—United States *v.* Borgfeldt (1 Ct. Cust. Appls., 370; T. D. 31455) followed.

United States General Appraisers, New York, September 28, 1911.

In the matter of protest 418292, etc., of B. Illfelder & Co. against the assessment of duty by the collector of customs at the port of New York.

Before Board 1 (SHARRETTS, McCLELLAND, and CHAMBERLAIN, General Appraisers).

SHARRETTS, *General Appraiser:* On the evidence and the appraiser's report we find the merchandise in question to be glass slides for toy magic lanterns. Duty was assessed on these slides at the rate of 45 per cent ad valorem under paragraph 107 of the tariff act of 1909, the importers claiming the same to be dutiable as toys or parts of toys at 35 per cent ad valorem under paragraph 431 of said act.

The same issue as here presented was decided by this board in favor of the importers in G. A. 7020 (T. D. 30613), and upon review by the United States Court of Customs Appeals the decision of the board was affirmed (1 Ct. Cust. Appls., 370; T. D. 31455), on authority of which we sustain the protests covering the merchandise in question, the collector's decision in each case being reversed.

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(T. D. 31898—G. A. 7280.)

Jurisdiction—Steamship "Altenburg."

IMPORTED MERCHANDISE.

The steamship *Altenburg*, arriving in the port of Philadelphia "in the ordinary course of navigation," is not imported merchandise within the meaning of the tariff act of 1909; and the Board of United States General Appraisers has no jurisdiction over a case involving an exaction of duties on such vessel, paid under protest. A subsequent conversion of the vessel into "scrap" held not to alter this rule.

United States General Appraisers, New York, September 30, 1911.

In the matter of protest 481310 of J. G. Hitner against the assessment of duty by the collector of customs at the port of Philadelphia.

Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers).

FISCHER, *General Appraiser:* The protestant, having purchased the iron steamship *Altenburg*, then lying in the port of Habana, Cuba, caused the same to be propelled under her own steam into the port of Philadelphia, at which place she arrived, according to the papers in the case, on January 8, 1910. The vessel appears to have been properly entered and the usual tonnage and port dues paid. After that, the protestant, finding that the said vessel could not be sold as a vessel, caused the same to be broken up and converted into scrap. That quite some time elapsed before this was done is evident from the date upon which the collector, finding that the vessel had been dismantled and made into scrap, caused the importer to enter such scrap under *informal* entry. The order for appraisement was issued from the collector's office on July 27, 1910, and duty was assessed against said importation at the rate of $1 per ton under the provisions of paragraph 118, tariff act of 1909, as scrap iron. The importer claims that the vessel was not "imported merchandise," that it had legally entered the country as a "vessel," and that its subsequent change of character did not subject it to assessment of duty under the tariff law.

We are satisfied that if the importer's contention herein is correct, this board is without jurisdiction to entertain the case. *In re* Fassett (142 U. S., 479); G. A. 5092 (T. D. 23560). If the vessel is not imported merchandise, then the action of the collector in exacting a duty is not reviewable under subsections 14 and 15 of section 28 of the act of 1909. We find it necessary to enter into a consideration of the merits to determine whether the imported article is merchandise.

The record would show that the vessel *Altenburg* arrived under her own power. There is some dispute here as to whether the vessel did arrive in that manner or was towed in by another vessel, but this we do not consider important, for in either event it arrived on its own bottom and was allowed entry under our navigation laws. It arrived at the port of Philadelphia "in the ordinary course of navigation." The sole question to be determined is whether a vessel arriving in that

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manner and whose character, as in this case, is subsequently changed thereby becomes merchandise subject to duty. That a vessel afloat is not "merchandise" under our tariff law and not an imported article was settled in the case of *The Conqueror* (166 U. S., 110). Duties attach on imported goods according to their condition at the time of their importation. United States *v.* Irwin (78 Fed. Rep., 799). The use to which an article will be ultimately put is not to be considered unless a statute so provides, and articles legally brought into the country may not be followed for the purpose of learning their use and with the purpose of assessing a duty in accordance with such use unless the particular provision of the law would require such action. United States *v.* Wotton (53 Fed. Rep., 344).

In this case the collector assessed duty on the iron scrap which resulted from the wrecking and dismantling of the vessel. The vessel arrived, not the scrap iron, and after the vessel was converted into scrap such scrap represented the vessel and was therefore not merchandise any more than the ship herself was. Note *The Gertrude* (10 Fed. Cas., 265). We conclude that the steamship in question, arriving as it did as a vessel, was not covered by the law laying duties on imported merchandise and was in nowise subject to customs duties, irrespective of the fact that the vessel had subsequent to its arrival been converted into scrap metal. The fact still remains that it was not imported *merchandise* when it entered the country, and that determines its status under our laws.

It follows that the protest must be dismissed for want of jurisdiction, which is accordingly ordered.

(T. D. 31899.)

Abstracts of decisions of the Board of General Appraisers.

Board 1.—Sharretts, McClelland, and Chamberlain. *Board 2.*—Fischer, Howell, and Cooper. *Board 3.*—Waite, Somerville, and Hay.

BEFORE BOARD 1, SEPTEMBER 26, 1911.

No. 26704.—PRECIOUS STONES, CUT.—Protest 367312 of B. Altman & Co. (New York). Opinion by Sharretts, G. A.

Pieces of onyx cut in bead form, suitable for use in the manufacture of jewelry and classified as manufactures of onyx under paragraph 115, tariff act of 1897, were claimed to be dutiable as precious stones cut but not set (par. 435). Protest sustained on the authority of G. A. 6932 (T. D. 29997).

No. 26705.—TOY MAGIC-LANTERN SLIDES.—Protest 488612-36513 of Butler Bros. (Chicago). Opinion by Sharretts, G. A.

Protest sustained as to toy magic-lantern slides on the authority of United States *v.* Borgfeldt (1 Ct. Cust. Appls., 370; T. D. 31455).

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No. 26706.—Cigar Lighters.—Protest 437733 of Massce & Co. (New York). Opinion by Sharretts, G. A.

Pocket cigar lighters made of brass, nickel-plated, and classified as articles of personal adornment under paragraph 448, tariff act of 1909, were held dutiable as smokers' articles (par. 475), as claimed by the importers. G. A. 7103 (T. D. 30943) followed.

No. 26707.—Imitation Jet—Gun-Metal Mesh Bags.—Protests 497115, etc., of B. Altman & Co. (New York), and protest 394310 of Max Deutz (Providence). Opinions by Sharretts, G. A.

Protests sustained as to imitation jet articles and gun-metal mesh bags on the authority of United States *v.* Beierle (1 Ct. Cust. Appls., 457; T. D. 31506) and G. A. 7129 (T. D. 31089).

No. 26708.—Beaded Articles.—Protests 474522–36371, etc., of Bernard, Judae & Co. (Chicago). Opinion by Sharretts, G. A.

Bags and purses in chief value of beads, with frames of gun metal or brass, classified as articles of personal adornment under paragraph 448, tariff act of 1909, were held dutiable as beaded articles (par. 421), as claimed by the importers.

No. 26709.—Cinematograph Films.—Protests 394622–30438, etc., of Chicago Film Exchange (Chicago). Opinion by Sharretts, G. A.

Protests sustained as to cinematograph films on the authority of United States *v.* Sussfeld (1 Ct. Cust. Appls., 51; T. D. 31030).

No. 26710.—Articles of Personal Adornment—Articles of Utility.—Protests 474243–36216, etc., and protest 500356–37601 of G. W. Sheldon & Co. (Chicago). Opinions by Sharretts, G. A.

Protests sustained as to articles of utility on the authority of G. A. 7129 (T. D. 31089).

No. 26711.—Protests Overruled.—Protest 489462–35967 of Morrison, Plummer & Co. (Chicago), protest 386259 of Weaver-Jackson Hair Co. (Los Angeles), protests 231932, etc., of Baum, Linz & Cohen et al., and protests 290718, etc., of A. Strauss & Co. et al. (New York), protests 401063, etc., of Gimbel Bros. (Philadelphia), protest 392005 of E. Kuhn (Port Townsend), and protest 355507 of Scruggs, Vandervoort & Barney (St. Louis). Opinions by Sharretts, G. A.

Protests overruled for want of merit.

No. 26712.—Walrus Leather—Rough Leather.—Protests 475621, etc., of Bailey-Lebby Co. et al. (Charleston), protests 419465, etc., of H. E. & C. D. Williams et al. (New York), and protest 493704 of Belcher & Loomis Hardware Co. (Providence). Opinions by McClelland, G. A.

Walrus leather, classified as leather not specially provided for under paragraph 451, tariff act of 1909, was held dutiable as rough leather under the same paragraph, as claimed by the importers. Abstract 23769 (T. D. 30828) followed.

No. 26713.—Violet Pastilles—Confectionery.—Protest 454307 of R. F. Downing & Co. (New York). Opinion by McClelland, G. A.

The board sustained the importers' claim that violet pastilles were dutiable as confectionery under paragraph 219, tariff act of 1909. Abstract 24099 (T. D. 31019) followed.

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No. 26714.—Unbleached Straw Braid.—Protest 467992 of Hirshbach & Smith (New York). Opinion by McClelland, G. A.

Braided straw imported in 12-yard lengths and classified as manufactures of straw under paragraph 463, tariff act of 1909, was claimed to be dutiable as unbleached straw braid (par. 422). Protest sustained.

No. 26715.—Olive Oil in Tins.—Protest 499208 of H. Kellogg & Sons (New York). Opinion by McClelland, G. A.

Protest sustained as to olive oil in commercial 5-gallon tins. Abstract 23717 (T. D. 30800) and Abstract 25427 (T. D. 31543) followed.

No. 26716.—Crude Drug.—Protest 479085, etc., of Maldonado & Co. (New York). Opinion by McClelland, G. A.

Merchandise classified as a drug advanced in value or condition under paragraph 20, tariff act of 1909, was held free of duty (par. 559) as a crude drug, as claimed by the importers.

No. 26717.—Willow Baskets.—Protests 478857, etc., of Jordan-Marsh Co. et al. (Boston). Opinion by McClelland, G. A.

Protests sustained as to willow baskets on the authority of Brody *v.* United States (T. D. 31573).

No. 26718.—Ornamental Feathers—Merchandise not in Public Stores Case.—Protest 401698 of George Legg (New York).

Merchandise classified as ornamental feathers under paragraph 425, tariff act of 1897, was claimed to be dutiable as manufactures of metal (par. 193). Protest overruled.

McClelland, *General Appraiser:* * * * The testimony offered on behalf of protestant, as well as the official record, shows that the case 25684 was not officially designated and was not before the appraiser for examination, but nevertheless that officer had for examination a sufficient number of packages to conform to the statutory requirements and make his appraisement legal.

On the hearing protestant produced no sample of the merchandise, and therefore neither the Government nor the board has the advantage of an examination of it. In Abstract decision 25070 (T. D. 31405) the board said:

> Protestants had knowledge that case 3958, containing the bags in controversy, had not been designated for examination and was not therefore before the appraiser. If, then, with such knowledge, they failed to retain and present on the trial of the same representative samples thereof so that counsel for the Government might have the benefit of examination thereof and the opportunity, if desired, to present proof in contravention of witness's statement or in support of the collector's action, they have failed to meet the burden which rested upon them. To hold otherwise might result in a procedure which would place the Government in many instances at the mercy of unscrupulous importers.

We adhere to this view and find the proof insufficient to sustain the claim. * * *

No. 26719.—Protests Overruled.—Protest 500749 of Paul Masson (Baltimore), protest 565444 of Stone & Downer Co. (Boston), protest 405443 of Brown & Roese, protests 456020, etc., of Gray Bros. et al., protests 451525, etc., of Hygeia Antiseptic Toothpick Co., and protest 498976 of F. H. Leggett & Co. (New York), protests 424210, etc., of A. Andresen & Co. (Minneapolis), protest 438093 of F. W. Myers & Co. (Plattsburg), protests 425999, etc., of Charles McClure et al. (St. Paul), protests 411562, etc., of Robert Dollar Co., and protest 435987 of George W. Reed & Co. (San Francisco). Opinions by McClelland, G. A.

Protests overruled for want of merit.

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BEFORE BOARD 2, SEPTEMBER 26, 1911.

No. 26720.—IRON MUCK BARS.—Protests 490491, etc., of William H. Masson (Baltimore), and protests 467257, etc., of Horace T. Potts & Co. (Philadelphia). Opinions by Fischer, G. A.

Protests sustained as to iron muck bars manufactured by the charcoal process. G. A. 7205 (T. D. 31494) followed.

No. 26721.—SILK FABRICS.—Protest 447482 of L. & E. Stirn (New York). Opinion by Howell, G. A.

Merchandise classified as silk veiling under paragraph 402, tariff act of 1909, was claimed to be dutiable as woven silk fabrics (par. 399). Protest sustained.

No. 26722.—MALINES NETS.—Protests 469119, etc., of H. Bauman & Co. et al., protests 473514, etc., of Lichtenstein Millinery Co., and protests 499048, etc., of P. K. Wilson & Son et al. (New York). Opinions by Howell, G. A.

Protests sustained as to Malines nets on the authority of Abstract 24701 (T. D. 31255).

No. 26723.—SILK FABRICS.—Protest 430374 of American Whalebone Co., and protests 419992, etc., of Spielmann & Co. (New York). Opinions by Howell, G. A.

The board sustained the importers' claims that certain woven silk fabrics had been classified under the wrong subdivision of paragraph 399, tariff act of 1909.

No. 26724.—PROTESTS OVERRULED.—Protest 459333 of American Whalebone Co., and protests 179825, etc., of J. R. Simon & Co. et al. (New York). Opinions by Howell, G. A.

Protests overruled for want of merit.

No. 26725.—EMBROIDERED FANS.—Protests 492995, etc., of Wah Chong et al. (Washington). Opinion by Cooper, G. A.

Protests sustained as to embroidered fans imported under the tariff act of 1909. United States *v.* Harper (T. D. 31655) followed.

No. 26726.—PROTESTS OVERRULED.—Protests 449821, etc., of Bonnet & Smith et al. (New York), and protest 439684 of Goldberg, Bowen & Co. (San Francisco). Opinions by Cooper, G. A.

Protests overruled for want of merit.

BEFORE BOARD 1, SEPTEMBER 27, 1911.

No. 26727.—PROTESTS OVERRULED.—Protest 460681 of Robert B. Ways (Baltimore), and protest 449755 of R. F. Downing & Co. (Boston). Opinions by Sharretts, G. A.

Protests overruled for want of merit.

BEFORE BOARD 2, SEPTEMBER 27, 1911.

No. 26728.—COATED-WIRE ARTICLES—FALSE REEDS.—Protests 476458, etc., of Knauth, Nachod & Kuhne (New York). Opinion by Fischer, G. A.

False reeds made of coated wire were held dutiable as coated-wire articles under paragraph 135, tariff act of 1909, as claimed by the importers, rather than as wire heddles or healds under the same paragraph, as assessed. Abstract 25887 (T. D. 31708) followed.

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No. 26729.—Iron Drums—Cylindrical Metal Containers.—Protests 483288–36427, etc., of A. C. Sherrard (Chicago). Opinion by Fischer, G. A.

Cylindrical iron drums containing fusel oil, classified under paragraph 151, tariff act of 1909, as cylindrical or tubular vessels were claimed to be free of duty as the usual containers of merchandise subject to specific duty. Protests overruled. United States *v.* Marx (1 Ct. Cust. Appls., 152; T. D. 31210) followed.

No. 26730.—Beltings.—Protest 430743 of Louis Metzger & Co. (New York). Opinion by Fischer, G. A.

Beltings made of metal thread and silk, classified as articles in chief value of metal thread under paragraph 179, tariff act of 1897, were held dutiable as beltings in part of silk (par. 389), as claimed by the importers.

No. 26731.—Silk Fabrics.—Protest 450893 of E. de Grandmont (New York). Opinion by Howell, G. A.

The board sustained the importer's claim that certain woven silk fabrics had been classified under the wrong subdivision of paragraph 399, tariff act of 1909.

No. 26732.—Malines Nets.—Protests 485455, etc., of W. Openhym & Sons and protest 490906 of B. Rinaldo (New York). Opinions by Howell, G. A.

Protests sustained as to Malines nets on the authority of Abstract 24701 (T. D. 31255).

No. 26733.—Protests Overruled.—Protests 459226–35482, etc., of R. Bensabott et al. (Chicago), protest 433116 of Campbell, Metzger & Jacobson, protests 253529, etc., of M. Gugenheim et al., protest 446158 of Martin Labe, and protests 428201, etc., of Mills & Duflot et al. (New York), and protests 409867, etc., of F. B. Vandegrift & Co. (Philadelphia). Opinions by Howell, G. A.

Protests overruled for want of merit.

No. 26734.—Cotton Cloth.—Protests 458097, etc., of H. Schloss et al., protest 458212 of J. H. Thorp & Co., and protests 460588, etc., of Wright & Graham (New York). Opinions by Cooper, G. A.

The board sustained the importers' claims that certain cotton cloth had been improperly subjected to the additional duty provided in paragraph 323, tariff act of 1909, for such goods when mercerized.

No. 26735.—Cotton Panel—Painting.—Protests 450062, etc., of P. C. Kuyper & Co. (New York).

Cooper, *General Appraiser:* The article in question, described on the invoice as "1 panneau," is a piece of cotton cloth 7½ by 10 feet in dimensions, woven in one piece. The appraiser reports that the cloth has designs "painted on the surface of the fabric in analine colors." The evidence discloses that it is painted by hand with a hunting scene and is used for wall hangings. Two of the sides have a selvage, while the other two are not hemmed or bound in any manner.

Duty was collected thereon at the rate of 45 per cent ad valorem under paragraph 332, tariff act of 1909, as a cotton article, and the importers claim that the merchandise is dutiable as cotton cloth under paragraphs 315 to 319, inclusive, or as a painting under paragraph 470.

With the exception of the painting the merchandise is a piece of cloth as it came from the loom. In its imported condition we think the merchandise is an article,

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and therefore can not be classified as countable cotton cloth. The claim under paragraph 470 can not be sustained, as it is not established by the evidence that it is a painting in oil or water colors.

The protests are overruled.

No. 26736.—Upholstery Goods.—Protest 462482 of F. Schumacher & Co. (New York). Opinion by Cooper, G. A.

Upholstery goods composed of cotton and jute, inadvertently classified as Jacquard figured upholstery goods under paragraph 326, tariff act of 1909, were held dutiable as manufactures of cotton (par. 332) or as manufactures of vegetable fibers (par. 358). Protest sustained.

No. 26737.—Embroidered Fans.—Protests 448400, etc., of Kwong Sun Chong et al. (New York). Opinion by Cooper, G. A.

Protests sustained as to embroidered fans imported under the act of 1909, on the authority of United States *v.* Harper (T. D. 31655).

No. 26738.—Brattice Cloth.—Protest 470579 of John F. Vandiver (Philadelphia). Opinion by Cooper, G. A.

Brattice cloth was held dutiable as plain woven fabrics of single jute yarns under paragraph 352, tariff act of 1909, as claimed by the importer, rather than as manufactures of jute (par. 358) as assessed.

No. 26739.—Figured Cotton Cloth.—Protest 461289 of S. H. Kahn & Co., and protests 463969, etc., of Randolph & Co. et al. (New York). Opinions by Cooper, G. A.

The board sustained the importers' claims that certain cotton cloth was improperly subjected to the additional duty provided in paragraph 323, tariff act of 1909, for such goods when figured. United States *v.* McConnell (1 Ct. Cust. Appls., 73; T. D. 31104) followed.

No. 26740.—Hemstitched Flax Articles.—Protest 425253 of Bon Marche (Port Townsend).

Cooper, *General Appraiser:* The merchandise covered by this protest is hemstitched flax articles. The collector classified the same under paragraph 349, tariff act of 1909, at 60 per cent ad valorem. It is claimed that the articles are properly dutiable at 45 per cent ad valorem under paragraph 358 of said act, as woven flax articles.

No reason has been assigned for the classification nor is there any brief filed in behalf of the Government. The only hemstitched articles enumerated in paragraph 349 are flouncings and skirtings, and there is no other provision under the paragraph which could cover this merchandise excepting, possibly, the provision for articles "from which threads have been drawn, cut, or punched to produce openwork." This latter provision was without doubt inserted to cover the articles generally described as "drawnwork." G. A. 7222 (T. D. 31588). As the articles weigh less than 4½ ounces per square yard and count more than 100 threads per square inch, we hold them dutiable at the rate of 45 per cent ad valorem under paragraph 358.

The protest is sustained.

No. 26741.—Spindle Banding.—Protest 428671 of Pitt & Scott (Boston).

Cotton bands used in the transmission of power, classified as manufactures of cotton under paragraph 332, tariff act of 1909, were claimed to be dutiable as belting for machinery (par. 330). Protest overruled.

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COOPER, *General Appraiser:* * * * The articles appear to be of the same character as those the subject of G. A. 6462 (T. D. 27664), but the evidence in this case differs materially from that in the former. The record now before us contains the testimony of two dealers in such merchandise to the effect that it is uniformly known in trade as "spindle bands" or "spindle banding," and the use to which it is put supports this testimony. In the former case no attempt was made either by the importer or the Government to establish commercial designation. We find that the articles in question are commercially known as "spindle bands" or as "spindle bandings," and hold them dutiable under paragraph 330 as spindle banding. * * *

No. 26742.—PROTESTS OVERRULED.—Protests 469388–35804, etc., of John L. Bobo & Co., et al., and protests 384940–30365, etc., of T. Buettner & Co. (Chicago), protest 427369 of Sell Horse Goods Co. (Cleveland), protests 453086, etc., of B. Altman & Co. et al., protests 438392, etc., of Campbell, Metzger & Jacobson et al., protests 456584, etc., of J. D. Irwin & Co., and protest 298889 of R. B. Maclea Co. (New York), protests 480534, etc., of N. C. Ives et al. (Philadelphia), and protest 446542 of Arnstein, Simon & Co. (San Francisco.). Opinions by Cooper, G. A.

Protests overruled for want of merit.

BEFORE BOARD 1, SEPTEMBER 28, 1911.

No. 26743.—PROTESTS ABANDONED.—Protest 505479 of F. B. Vandegrift & Co. (Boston), protest 368439 of Ashcroft Manufacturing Co. (Bridgeport), protest 491178 of John Wanamaker (Philadelphia), and protest 508440 of F. B. Vandegrift & Co. (San Francisco). Opinions by Sharretts, G. A.

Protests abandoned.

No. 26744.—APRON LEATHER.—Protest 488535 of F. B. Vandegrift & Co. (New York). Opinion by McClelland, G. A.

Protest sustained as to apron leather on the authority of United States *v.* Richards (1 Ct. Cust. Appls., 537; T. D. 31548).

No. 26745.—ULTRAMARINE BLUE.—Protest 497320 of G. A. & E. Meyer (New York). Opinion by McClelland, G. A.

Merchandise invoiced as "Guiment's Ultramine Blue" and classified as artists' colors under paragraph 56, tariff act of 1909, was held dutiable as ultramarine blue (par. 50), as claimed by the importers.

No. 26746.—OLIVE OIL IN TINS.—Protest 499188 of C. Friedenberg (New York). Opinion by McClelland, G. A.

Protest sustained as to olive oil in commercial 5-gallon tins. Abstract 25938 (T. D. 31720) followed.

No. 26747.—WILLOW SHEETS, BLEACHED.—Protest 473513 of J. H. Lichtenstein & Co. (New York). Opinion by McClelland, G. A.

Willow sheets of the same character as those passed upon in Abstract 25325 (T. D. 31103), except that the straw and cotton backing were both bleached, were classified as manufactures of chip under paragraph 463, tariff act of 1909, and held dutiable as willow sheets or squares, bleached (par. 422). Protest sustained.

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No. 26748.—Foot Shampoo—Toilet Articles—Medicinal Preparations.—Protests 498944, etc., of F. Korndorfer (New York). Opinion by McClelland, G. A.

Protests sustained as to foot shampoo on the authority of Abstract 26104 (T. D. 31757).

No. 26749.—Lambskins with Wool on—Sheepskins.—Protests 424636, etc., of John Dunn, jr., & Co. (Philadelphia).

McClelland, *General Appraiser:* The special reports of the appraiser on these cases show that the merchandise consists of lambskins with wool on, and duty was assessed on the wool at the rate of 3 cents per pound under paragraphs 370 and 371 of the tariff act of 1909. Protestants claim that these skins are lambskins and entitled to free entry under paragraph 676 of said act.

In deciding protest number 420083, October 24, 1910, which involved a similar issue, the board said:

Protestants sought to show that there was a distinction between lambskins and sheepskins, and that the skins in question, being lambskins, should therefore be admitted free. It is wholly immaterial whether the skins are of sheep or lambs; the growth thereon is wool and subject to duty as such.

In harmony with the decision cited the protests are overruled, the action of the collector being affirmed in each case.

No. 26750.—Enamel Colors.—Protest 419662 of O. Hommel Co. (New York). Opinion by McClelland, G. A.

Protests sustained as to enamel colors containing lead on the authority of United States *v.* Marsching (1 Ct. Cust. Appls., 216; T. D. 31257).

No. 26751.—Willow Baskets.—Protest 443661 of A. A. Vantine & Co. (New York). Opinion by McClelland, G. A.

Protests sustained as to willow baskets. Brody *v.* United States (T. D. 31573) followed.

No. 26752.—Fur Skins, Dressed—Beaver Strips—Squirrel Tails—Dressed Sheepskins.—Protests 401865, etc., of H. Eulenstein et al., and protest 432198 of R. F. Lang (New York), and protests 474565, etc., of Lowengart & Co. (Portland, Oreg.). Opinions by McClelland, G. A.

Protests sustained as to furs dressed on the skin, beaver strips, squirrel tails, and dressed sheepskins on the authority of G. A. 7063 (T. D. 30765), G. A. 7109 (T. D. 30990), Abstract 24183 (T. D. 31053), Abstract 23747 (T. D. 30828), and United States *v.* Richter (T. D. 31680).

No. 26753.—Protests Overruled.—Protest 454643 of Houghton & Dutton Co. (Boston), protest 437177 of George Borgfeldt & Co., protests 500449, etc., of H. Jaeckel & Sons, protests 248139, etc., of F. H. Leggett & Co. et al., protests 421920, etc., of L. Meyers & Sons et al., and protest 268617 of C. H. Tenny & Co. (New York), protest 406787 of George Allen, and protests 343742, etc., of John Wanamaker (Philadelphia), and protest 498716 of Carlowitz & Co., and protest 466354 of F. F. G. Harper & Co. (San Francisco). Opinions by McClelland, G. A.

Protests overruled for want of merit.

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BEFORE BOARD 2, SEPTEMBER 28, 1911.

No. 26754.—CYLINDRICAL METAL CONTAINERS.—Protests 420281, etc., of Hammill & Gillespie (New York). Opinion by Fischer, G. A.

Sheet-metal drums containing chloride of magnesium, classified as cylindrical or tubular vessels under paragraph 151, tariff act of 1909, were claimed to be dutiable at the rate applicable to their contents. Protests sustained on the authority of United States *v.* Braun (T. D. 31596).

No. 26755.—MALINES NETS.—Protests 498186, etc., of Goldenberg Bros. & Co. et al. (New York). Opinion by Howell, G. A.

Protests sustained as to Malines nets on the authority of Abstract 24701 (T. D. 31255).

No. 26756.—DRAWNWORK—SCALLOPED ARTICLES.—Protest 316480–27496 of Butler Bros. (Chicago), and protests 97111f, etc., of Neuss, Hesslein & Co., protests 122705, etc., of Stanton Bros., and protest 195538 of Syndicate Trading Co. et al. (New York). Opinions by Cooper, G. A.

Protests sustained as to drawnwork articles and scalloped articles on the authority of G. A. 6993 (T. D. 30442) and G. A. 6966 (T. D. 30271).

No. 26757.—EMBROIDERED FANS.—Protests 213919, etc., of Lee Tai Lung et al. (New York). Opinion by Cooper, G. A.

Protests sustained as to embroidered fans imported under the act of 1897. United States *v.* Harper (T. D. 31655) followed.

No. 26758.—PROTESTS OVERRULED.—Protests 270716, etc., of James A. Hayes & Co. et al. (Boston), and protests 437471, etc., of Martin Labe, protests 458620, etc., of Spielmann & Co. et al., and protests 95533f, etc., of B. Ulmann & Co. et al. (New York). Opinions by Cooper, G. A.

Protests overruled for want of merit.

(T. D. 31900.)

Drawback on feathers.

Drawback on feathers imported in a raw condition and bleached and dyed by the London Feather Co., New York City.

TREASURY DEPARTMENT, *October 2, 1911.*

SIR: Drawback is hereby allowed under section 25 of the tariff act of August 5, 1909, and the regulations promulgated thereunder (T. D. 31695 of June 16, 1911), on feathers imported by the London Feather Co., of New York City, in a raw condition and bleached and dyed without grading or sorting.

The identity of the imported lots must be preserved during the processes of bleaching and dyeing.

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The manufacturers' sworn statements, dated August 15 and 22, 1911, are transmitted herewith for filing in your office.

Respectfully, JAMES F. CURTIS,
(87596.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 31901.)

Flax felt.

Flax felt saturated with coal tar or pine tar, similar to that the subject of the decision of the Board of United States General Appraisers in T. D. 22448, dutiable as roofing felt at the rate of 10 per cent ad valorem under paragraph 407, tariff act of August 5, 1909.

TREASURY DEPARTMENT, *October 3, 1911.*

SIR: The department duly received your letter of the 26th of April last, transmitting a communication from the appraiser at your port relative to the proper classification of certain merchandise imported by a roofing concern and invoiced as black ship sheathing felt.

The merchandise in question consists of flax felt saturated with coal tar or pine tar. It is not adhesive, is considerably thinner than the "adhesive felt" sometimes used for sheathing vessels, and appears to be entirely similar to the merchandise held by the Board of United States General Appraisers in T. D. 22448 of August 17, 1900, to be dutiable as "roofing felt" under the provisions of paragraph 394 of the tariff act of 1897, which were identical with the provisions of paragraph 407 of the act of August 5, 1909, now in force.

It appears from an investigation made by the department that the felt in question is sometimes used for separating or deadening walls, sometimes as an underlayer with other felts for roofing, and sometimes as a filling between the inner and outer soles of shoes. While it is also sometimes used in shipbuilding in lining canvas decks as a "stop water" on angle bars, or otherwise, it is rarely if ever used for sheathing vessels. It also appears that the "adhesive felt for sheathing vessels" provided for by paragraph 564 of the existing tariff act is no longer extensively imported, for the reason that copper paint is now commonly used on the bottoms of the comparatively few wooden vessels that are built, and sheathing felt is, therefore, no longer commonly used for that purpose.

The department is of the opinion that the merchandise in question is properly dutiable at the rate of 10 per cent ad valorem as roofing felt, under the provisions of paragraph 407 of the existing tariff act.

You will be governed accordingly.

Respectfully, JAMES F. CURTIS,
(87567.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *Chicago, Ill.*

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(T. D. 31902.)

Drawback on wind shields.

Drawback on wind shields manufactured by the Rands Manufacturing Co., of Detroit, Mich., with the use of imported plate glass.

TREASURY DEPARTMENT, *October 4, 1911.*

SIR: Drawback is hereby allowed under section 25 of the tariff act of August 5, 1909, and the regulations promulgated thereunder (T. D. 31695 of June 16, 1911), on wind shields manufactured by the Rands Manufacturing Co., of Detroit, Mich., with the use of imported plate glass.

The allowance shall not exceed the quantity of glass contained in the exported shields, there being no wastage.

The manufacturers' sworn statements, dated July 26 and August 12, 1911, are inclosed herewith for filing in your office.

Respectfully, JAMES F. CURTIS,
(88058.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Detroit, Mich.*

(T. D. 31903.)

Appraisement—Royalties on books.

In the appraisement of books under subsection 11 of section 28, tariff act of August 5, 1909, royalties paid to an author are not to be computed as a part of the cost of production.

TREASURY DEPARTMENT, *October 5, 1911.*

SIR: The department duly received your letters of May 9 and July 28 last relative to the appraisement of imported books. The question presented is whether a royalty paid by a publisher to an author should be considered as a part of the dutiable value of such books.

Owing to the peculiar conditions existing in the publishing business the determination of the market value of imported books has been for many years the subject of controversy and of decisions by the department and by the Board of United States General Appraisers. The cases in which the question is presented of the inclusion of royalties in the dutiable values of such books may be divided into two general classes:

(1) That of completed books which are sold or offered for sale in the country from which imported, and which under the provisions of subsection 18 of section 28 of the tariff act are dutiable upon their foreign market value, viz, upon the price at which the same are usually sold or are freely offered for sale in the usual wholesale quantities in the principal markets of the country from which imported.

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Such market value constitutes the dutiable value regardless of the individual items which may be included therein. It sometimes occurs, however, that books are sold to dealers in the country from which exported at a price which includes the royalty paid to the author, while the same books when sold for exportation to this country do not include such royalty. The department is of the opinion that in such cases the price at which the books are sold for consumption in the foreign market must be considered the market value for the purpose of the assessment of duty, and so held in T. D. 23374, following the decision of the Supreme Court in United States *v.* Passavant (169 U. S., 16).

(2) Cases in which books or sheets therefor are not freely sold or offered for sale in the country of exportation and which, therefore, have no foreign market value. In such cases appraisement must be made in the manner prescribed by subsection 11 of section 28 of the existing tariff act by determining the cost of production, expenses, profit, etc. To do so it is necessary to determine whether the royalty, if any, paid to the author constitutes a part of the cost of production. While royalties are paid under varying conditions, the same may be divided into two general classes:

(*a*) Where the publisher, either foreign or American, agrees with the author to publish a certain number of books for sale in all English-speaking countries and to pay to him a certain royalty upon each volume sold. For convenience and economy it is the practice to print the entire edition of such books, either in Great Britain or in this country, and to distribute the same in loose sheets to publishers or dealers in the United States, Great Britain, Canada, and Australia at a certain price per sheet, and in addition to such price the publisher or dealer receiving the same pays a royalty upon the sale of such books, either directly to the author, or through the publishing house by whom the sheets were printed. In such cases the royalty becomes payable on the sale of the books and not upon importation. It does not constitute a part of the cost of printing and selling the publication and does not accrue to the benefit of the vendor or shipper, but is paid to the author either in this country or abroad for the privilege of using his manuscript, and, in the department's opinion, is clearly not a part of the dutiable value of the sheets imported.

(*b*) Where a lump sum is paid by the publisher to the author for the use of his manuscript and the publisher is reimbursed by the various dealers or publishers to whom he distributes the sheets in America, Great Britain, Canada, and Australia, sometimes on an arbitrary basis and at other times in proportion to the number of copies received by each. While in such cases the royalty becomes payable upon the importation being made, it is obvious that it is not paid to the publisher for the sheets, but is a compensation paid to the writer for his

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authorship, and would be payable to him none the less if the sheets for the books were printed in this country.

That it was not the intention of Congress to impose a tax upon literature or authorship is evidenced by the provisions of paragraph 621 of the existing tariff act for the free entry of manuscripts and it has not been the usual practice in the past to include payments made to authors for the use of their manuscripts in the dutiable value of books printed therefrom, unless, as above stated, such books were sold or offered for sale in the country from which imported, in which case the wholesale price for which they were freely offered for sale has been considered the dutiable value regardless of the items taken into consideration in fixing such price.

It was held as early as April 11, 1877, in T. D. 3196, that the royalties to be paid on the sale of imported books did not constitute a dutiable item and was not, therefore, to be included in the appraised value thereof, and in the case of the United States *v.* Leigh (39 Fed. Rep., 764) and in T. D. 25176 and T. D. 21655 it was held that royalties paid for the right to use an imported article constitute no part of the market value thereof.

While there are some decisions of the department and of the Board of United States General Appraisers which are apparently contrary to those above cited, some of which, at least, may be distinguished because relating to books freely sold and offered for sale in the country from which imported, the department is of the opinion that the weight of authority, as well as the better reasoning, supports the conclusions herein reached, as follows:

(1) That in determining the market value of imported books in the manner prescribed by subsection 11 of section 28 of the tariff act, the royalty paid to the author either directly or through the foreign publisher should not be considered a dutiable item.

(2) That when books in sheets which are not freely sold or offered for sale in that condition in the country of exportation are covered by an invoice showing in addition to the price paid to the publisher, the royalty paid or to be paid to the author for the use of his manuscript, such royalty does not constitute a dutiable charge.

(3) That when books are freely sold or offered for sale in their condition as imported in the principal markets of the country of exportation, the wholesale price at which the same are so sold or offered for sale constitutes the foreign market value, and is therefore the dutiable value thereof regardless of the items of cost, profit, royalty, etc., which may have been taken into consideration in fixing such price.

Appraising officers will be governed accordingly.

Respectfully, FRANKLIN MACVEAGH,
(88913.) *Secretary.*

UNITED STATES APPRAISER, *New York.*

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(T. D. 31904.)

American goods returned—Compliance with Treasury regulations.

Appeal directed from decision of the Board of United States General Appraisers of August 17, 1911, Abstract 26388 (T. D. 31832), involving the question whether there had been a compliance with article 570 of the Customs Regulations of 1908 relating to the return of American goods free of duty.

TREASURY DEPARTMENT, *October 6, 1911.*

SIR: The department is in receipt of your letter of the 29th ultimo, inviting attention to the decision of the Board of United States General Appraisers of August 17, 1911, Abstract 26388 (T. D. 31832), involving the question whether there had been a compliance with article 570 of the Customs Regulations of 1908 relating to the return of American goods free of duty.

In view of the importance of the issue, you are hereby requested to file, in the name of the Secretary of the Treasury, an application with the United States Court of Customs Appeals for a review of the said decision, in accordance with the provisions of subsection 29 of section 28 of the tariff act of August 5, 1909.

Respectfully, R. O. BAILEY,
(91499.) *Assistant Secretary.*

Hon. WM. L. WEMPLE,
Assistant Attorney General, New York.

(T. D. 31905.)

The rate of premium charged by surety companies for the execution of fidelity bonds on behalf of the Government to be given on the face of the bond.

[Circular No. 60.]

TREASURY DEPARTMENT, *October 7, 1911.*

To bonding companies and all others concerned:

The act of Congress approved August 25, 1909 (36 Stats., pt. 1, Public Laws, p. 125), provides as follows:

Until otherwise provided by law no bond shall be accepted from any surety or bonding company for any officer or employee of the United States which shall cost more than thirty-five per centum in excess of the rate of premium charged for a like bond during the calendar year nineteen hundred and eight: *Provided*, That hereafter the United States shall not pay any part of the premium or other cost of furnishing a bond required by law or otherwise of any officer or employee of the United States.

On and after November 1, 1911, all surety companies authorized to transact a fidelity and surety insurance business on behalf of the Government will be required, in the case of all fidelity bonds filed with the Treasury Department, to clearly state upon the face of each fidel-

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ity bond executed the rate of premium charged per thousand, with the total amount of premium charged on the full penalty of the bond.

This practice will obviate the necessity of submitting statements with the bonds from the surety companies in the shape of premium receipts showing the amount of premiums charged but not actually paid at the time of the execution of the bond.

A. PIATT ANDREW, *Acting Secretary.*

(T. D. 31906.)

Special agents' districts.

TREASURY DEPARTMENT, *October 16, 1911.*

To collectors and other officers of the customs:

From and after this date the districts of special agents of the customs will be as follows:

District No. 1.—The customs collection districts in the States of Maine, New Hampshire, Massachusetts, Rhode Island, and Connecticut. Headquarters, Boston, Mass.

District No. 2.—The customs collection districts of the city of New York, Sag Harbor, and the districts of Newark and Perth Amboy, in the State of New Jersey. Headquarters, New York City.

District No. 3.—The customs collection districts of Oswegatchie, Cape Vincent, Champlain, in the State of New York, and the customs collection districts of Burlington and Memphremagog, in the State of Vermont. Headquarters, Burlington, Vt.

District No. 4.—The customs collection districts of Buffalo Creek, Niagara, Genesee, Dunkirk, Erie, and Oswego. Headquarters, Buffalo, N. Y.

District No. 5.—The customs collection districts in the States of Pennsylvania, Delaware, and New Jersey, except the districts of Newark and Perth Amboy. Headquarters, Philadelphia, Pa.

District No. 6.—The customs collection districts in the States of Maryland, Virginia, West Virginia, and the district of Georgetown, D. C. Headquarters, Baltimore, Md.

District No. 7.—The customs collection districts in the States of North Carolina, South Carolina, and Georgia. Headquarters, Savannah, Ga.

District No. 8.—The customs collection districts in the State of Florida. Headquarters, Tampa, Fla.

District No. 9.—The customs collection districts and ports in the States of Louisiana, Mississippi, and Alabama. Headquarters, New Orleans, La.

District No. 10.—The customs collection districts in the State of Texas, except the district of Paso del Norte. Headquarters, Galveston, Tex.

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District No 11.—The customs collection districts of Paso del Norte, Tex., and Arizona. Headquarters, El Paso, Tex.

District No. 12.—The customs collection districts and ports in the States of Indiana, Kentucky, and Ohio, except the districts of Miami, Sandusky, and Cuyahoga, Ohio. Headquarters, Cincinnati, Ohio.

District No. 13.—The customs collection districts and ports in the States of Missouri, Nebraska, Iowa, and Tennessee. Headquarters, St. Louis, Mo.

District No. 14.—The customs collection districts and ports in the State of Michigan and that portion of the customs district of Superior in the State of Wisconsin. Headquarters, Detroit, Mich.

District No. 15.—The customs collection districts of Chicago and Milwaukee, and all ports in the States of Illinois and Wisconsin, except those in the district of Superior, Wis. Headquarters, Chicago, Ill.

District No. 16.—The customs collection districts of Montana, Idaho, Minnesota, and North and South Dakota. Headquarters, St. Paul, Minn.

District No. 17.—The customs collection districts in the State of California. Headquarters, San Francisco, Cal.

District No. 18.—The customs collection districts in the States of Oregon and Washington and the District of Alaska. Headquarters, Seattle, Wash.

District No. 19.—The customs collection districts of Miami, Sandusky, and Cuyahoga, in the State of Ohio. Headquarters, Cleveland, Ohio.

District No. 20.—The customs collection districts and ports in the States of Colorado, Utah, and Wyoming. Headquarters, Denver, Colo.

FRANKLIN MACVEAGH, *Secretary.*

(T. D. 31907—G. A. 7281.)

Articles of personal adornment—Fob chains.

Fob chains composed of gun metal and white metal, valued at more than 20 cents per dozen pieces, commonly and commercially known as jewelry, are dutiable as articles of personal adornment under paragraph 448, tariff act of 1909, and not as "articles commonly or commercially known as jewelry," under the same paragraph. The provision for "articles commonly and commercially known as jewelry" is limited to those composed of gold or platinum.—G. A. 7019 (T. D. 30612) followed.

United States General Appraisers, New York, October 2, 1911.

In the matter of protest 500778-36826 of Marshall Field & Co. against the assessment of duty by the collector of customs at the port of Chicago.

Before Board 1 (SHARRETTS, MCCLELLAND, and CHAMBERLAIN, General Appraisers).

SHARRETTS, *General Appraiser:* We find the merchandise in question to be watch and fob chains, commonly and commercially known

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as jewelry, composed of gun metal and white metal and valued at more than 20 cents per dozen pieces. Duty was assessed on these chains at the rate of 85 per cent ad valorem under paragraph 448 of the tariff act of 1909, the claim relied upon by the importers being that said articles are dutiable at 60 per cent ad valorem under the concluding clause of the same paragraph.

This case would probably never have arisen had not the Government appealed from decision G. A. 7019 (T. D. 30612) on the ground that the board erred in holding that the provision in paragraph 448 for "articles commonly or commercially known as jewelry" was limited to articles composed of gold or platinum. The decision cited, which involved articles of personal adornment set with imitation jet, was affirmed by the United States Court of Customs Appeals on a collateral issue, however, namely, that articles set with imitation jet were not commonly or commercially known as jewelry. The contention referred to on the part of the Government inspired importers to file thousands of protests, they contending, with some degree of force, that the provision for "articles commonly or commercially known as jewelry" is more specific than for "articles * * * designed to be worn on apparel or carried on or about or attached to the person." Such is the contention relied upon in the case now before us for decision. In G. A. 7019, *supra*, the board purposely omitted finding as a fact that the merchandise covered thereby was not commonly or commercially known as jewelry in order to secure a ruling of the court whether or not the words "composed of gold or platinum" apply to jewelry or were limited to mesh bags and purses. In the absence of such ruling we feel constrained to again discuss the issue here involved.

Additional words must be read into the law to warrant the conclusion that "all articles commonly or commercially known as jewelry," regardless of material, are dutiable at 60 per cent ad valorem under paragraph 448. Jewelry of a prescribed kind having been provided for in the first part of this paragraph, if it were intended that all other jewelry was to be included in the last clause thereof, it is reasonable to suppose that Congress would have manifested such intent by using one of the usual phrases, "all *other* articles commonly or commercially known as jewelry," or "all articles commonly or commercially known as jewelry not specially provided for herein," or "*Provided*, That no article commonly or commercially known as jewelry, including chain, mesh, mesh bags or purses, shall pay a less rate of duty than 60 per cent ad valorem." It would be a strained construction to hold that the lawmakers omitted using one of these phrases common to all tariff acts had their intention not been to limit the last clause of the paragraph to jewelry composed of gold or platinum. The term

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"mesh bags and purses" are words of addition, these articles by judicial determination not being jewelry.

The law will not allow the revocation or alteration of a statute by construction when the words may have their proper operation without it. But, in the nature of things, *contradictions* can not stand together.—Sutherland on Statutory Construction (p. 286).

The two provisions in paragraph 448, namely, "All * * * articles of every description * * * composed wholly or in chief value of silver, German silver, white metal, brass or gun metal * * * known as jewelry * * *," and "All articles commonly or commercially known as jewelry" without limitation as to material or value, furnish an excellent example of contradictions standing together. If the two provisions can be read as they are written, without regard to punctuation so as to avoid all repugnancy and have their proper operation, the interpretation of words or phrases designed to effect a different meaning is not permissible. It is conceded that a comma after the word "purses" eliminates the necessity of construing the provisions of paragraph 448 with regard to jewelry, for, so punctuated, the first part of the paragraph relates to jewelry composed of silver and base metal, while the concluding clause would apply only to jewelry composed of gold or platinum. In the case of United States *v.* American Thermo-Ware Co. (T. D. 31571) the Court of Customs Appeals said:

Punctuation is not always a safe guide to the interpretation of laws, as experience shows that they are not infrequently salted and peppered with commas quite at variance with what the lawmaker intended to say.

It certainly is not straining the law to pepper paragraph 448 with one more comma to make it reasonable and harmonious throughout. That Congress intended the words "composed of gold or platinum" to apply to jewelry, including chain, mesh, and mesh bags and purses, is borne out by the history of the times coincident with the passage of the present tariff act, as shown in G. A. 7019, *supra*. In addition to this, it is important to note that the clause involved is punctuated in precisely the same manner as a number of other paragraphs in the act. Two or three illustrations will suffice to establish this fact. Paragraph 405, after the final semicolon, enumerates a list of articles, each followed by a comma, and concludes with the phrase, "or other articles or fabrics composed wholly or in chief value of yarns," etc. Although there is no comma after the word "fabrics," no doubt can exist tha the words "composed wholly or in chief value of yarn," etc., are not limited to articles or fabrics, but apply to the entire list of enumerated articles.

Paragraph 399 provides for "velvet or plush ribbons, or other pile fabrics not over twelve inches and not less than three-fourths of one

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inch in width," etc. There is no comma after the word fabrics; nevertheless the width has been held and is intended to qualify "velvet or plush ribbons," as well as "other pile fabrics." In manner of punctuation, the disputed clause in paragraph 448 is identical with the quoted provisions of paragraphs 399 and 405.

Paragraph 382 furnishes an example that parallels in all respects the case at bar, as will be shown by quoting the pertinent parts of the two paragraphs:

448. All articles commonly or commercially known as jewelry, or parts thereof, finished or unfinished, including chain, mesh, and mesh bags and purses (,) composed of gold or platinum. * * *

382. On clothing, ready-made, and articles of wearing apparel of every description, including shawls whether knitted or woven, and knitted articles of every description (,) made up or manufactured wholly or in part, * * * etc.

If it be held that because of the omission of the comma after the word "purses" in paragraph 448, the words "composed of gold or platinum" apply only to "purses," or at most to the materials following the word "including," then it must be held that in paragraph 382 the words "made up or manufactured wholly or in part" apply only to "knitted articles of every description," or at most to the articles following the word "including," in which case "clothing, ready-made, and articles of wearing apparel of every description," unfinished or made up only in part, are not included in this paragraph and are duti able as manufactures of wool at a much lower rate of duty.

For the reasons set forth herein and in G. A. 7019, *supra*, we hold that the provision in paragraph 448 for "articles commonly or commercially known as jewelry" is limited to articles composed of gold or platinum. Having reached this conclusion, it is unnecessary to determine which of the two provisions relating to jewelry is the more specific.

The protest is overruled and the collector's decision affirmed.

(T. D. 31908—G. A. 7282.)

Ladies' leather gloves.

Ladies' leather gloves having from five to eight rows of stitching with three or more cords as ornamentations on the backs thereof, are "stitched or embroidered with more than three single strands or cords," within the meaning of paragraph 445 of the tariff act of 1897 and paragraph 459 of the act of 1909, and, therefore, *held* subject to the cumulative duty of 40 cents per dozen pairs as provided in said paragraphs.—La Fetra *v.* United States (172 Fed. Rep., 297; T. D. 29810) cited and distinguished.

United States General Appraisers, New York, October 3, 1911.

In the matter of protests 301568, etc., of Germain, Hoffbauer & Helm Co. et al. against the assessment of duty by the collector of customs at the port of New York.

Before Board 1 (SHARRETTS, MCCLELLAND, and CHAMBERLAIN, General Appraisers).

MCCLELLAND, *General Appraiser:* The issue raised by these protests is whether certain ladies' leather gloves covered thereby are sub-

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ject to the cumulative duty of 40 cents per dozen pairs under paragraph 445 of the tariff act of 1897 or paragraph 459 of the tariff act of 1909 by reason of being "stitched or embroidered with more than three single strands or cords."

The issue of whether such duty was assessable has been repeatedly tried before the board and the courts except that in practically every case the ornamentation on the glove involved has been different.

In the La Fetra case (172 Fed. Rep., 297; T. D. 29810), affirmed by the Circuit Court of Appeals (178 Fed. Rep., 1006; T. D. 30471), it was held that the gloves there in question were not subject to the cumulative duty of 40 cents per dozen pairs, although the gloves were so embroidered as to produce three rows on the back of each glove, each row presenting the appearance of a 3-plait crochet work, the effect being produced by the needle with only one cord or strand of thread.

There is no similarity between the ornamentation of the gloves in question and the gloves in the La Fetra case, *supra*, as none of the embroideries give the crochet effect.

In abstract decision 24000 (T. D. 30994) the board held certain ladies' leather gloves, having six chains of embroidery on the back thereof and six single rows of stitching on the inside, to be subject to this cumulative duty of 40 cents per dozen pairs, and from that decision an appeal was taken to the Court of Customs Appeals, and in Carson *v.* United States (T. D. 31656) the decision of the board was affirmed.

With the single exception of Exhibit 1, which it is stipulated is representative of the gloves covered by protests 301568, 308690, 309186, 311953, 311954, 320378, 321869, 326964, and 332050, the gloves represented by the other exhibits are similarly ornamented to those involved in the Carson case, *supra*.

Exhibit 2 shows nine rows of stitching with three cords: Exhibits 3 and 4, six rows of stitching with three cords; Exhibit 5, three rows of stitching with six cords; Exhibit 6, six rows of stitching with three cords; Exhibit 7, twelve rows of stitching with three cords; and Exhibit 8, nine rows of stitching with nine cords.

We therefore find that, except as to the gloves represented by Exhibit 1, covered by the protests numbered as above, the gloves in question are stitched or embroidered with more than three single strands or cords, and hold them to be subject to duty as assessed.

Protests 301568, 308690, 309186, 311953, 311954, 320378, 321869, 326964, and 332050 are sustained, all of the other protests being overruled.

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(T. D. 31909—G. A. 7283.)

Knitted cotton gloves.

1. KNITTED GLOVES—FABRIC GLOVES.

The provision in paragraph 328, tariff act of 1909, for "men's and boys' cotton gloves, knitted," is not limited to gloves made on a knitting machine, but includes such as are made from knitted fabrics by cutting or stamping out patterns and sewing them together.

2. SAME—COMMERCIAL DESIGNATION.

The term "gloves, knitted," as used in paragraph 328, tariff act of 1909, is not a commercial term, and therefore testimony tending to prove that it has a commercial meaning different from the ordinary is irrelevant.

United States General Appraisers, New York, October 5, 1911.

In the matter of protests 422797, etc., of Spielmann & Co. et al. against the assessment of duty by the collector of customs at the port of New York.

Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers; HOWELL, G. A., absent).

COOPER, *General Appraiser:* The question at issue in these protests is the same as was passed upon by the board in G. A. 7092 (T. D. 30900), which decision reads as follows:

The importations consist of men's and boys' cotton gloves. They were assessed for duty at the rate of 50 cents per dozen pairs and 40 per cent ad valorem under the following provision in paragraph 328, tariff act of 1909:

328. * * * Men's and boys' cotton gloves, knitted or woven, valued at not more than six dollars per dozen pairs, fifty cents per dozen pairs and forty per centum ad valorem. * * *

The importers claim that they are properly dutiable as cotton wearing apparel at the rate of 50 per cent ad valorem under the provisions of paragraph 324 of said act, which reads as follows:

324. Clothing, ready-made, and articles of wearing apparel of every description, composed of cotton or other vegetable fiber, or of which cotton or other vegetable fiber is the component material of chief value, made up or manufactured, wholly or in part, by the tailor, seamstress, or manufacturer, and not otherwise provided for in this section, fifty per centum ad valorem.

Or under paragraph 332 at the rate of 45 per cent ad valorem, the pertinent portions of which are as follows:

332. All articles made from cotton cloth, whether finished or unfinished, and all manufactures of cotton, * * * not specially provided for in this section, forty-five per centum ad valorem.

The gloves in question are not knitted to form, but are made from a knitted fabric by cutting or stamping out patterns and sewing them together. The edges at the wrists are hemmed, and in the Hilliard case there is an elastic band sewed on the inner side of the wrist.

Counsel for the importers contends for such a construction and interpretation of the word "knitted" as would exclude these gloves and include only such as are wholly, or as nearly so as possible, knitted into form as a glove on a frame or knitting machine.

Words in tariff acts are presumed to have been used in their popular sense, unless it is shown by testimony that they have a peculiar meaning in trade. (Swan *v.* Arthur, 103 U. S., 593.) No attempt has been made to show that the term "knitted gloves" has any meaning in trade different from its ordinary meaning. In their

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condition as imported the gloves are knitted. That is the principal method of fabrication employed, the sewing constituting the minor and incidental work.

The meaning of "knitted gloves" as contended for by counsel for the importers seems to us a predestined interpretation. A sound interpretation in good faith and common sense, so as to put into effect the meaning of Congress, would be to hold that "knitted gloves" are gloves wholly or partly knitted wherein the principal factor is the knitting.

In Schoellkopf *v.* United States (71 Fed. Rep., 694) the court said:

> The use by Congress of the single word "paraffin," without any qualification, manifests an intention to cover at least all varieties of the article which were known when the act was passed. * * *

So here the use of the word "knitted" without terms of qualification shows an intention to include in this provision all kinds of knitted gloves, whether wholly or partly knitted, so long as the principal feature is the knitting. It has been uniformly held by the Supreme Court, as well as by the other courts and the board, that a provision for manufactures of a material was not limited to manufactures composed wholly of that material. (Arthur's Executors *v.* Butterfield, 125 U. S., 70; Drew *v.* Grinnell, 115 U. S., 477; Schiff *v.* United States, 99 Fed. Rep., 555; *In re* Wise, 93 Fed. Rep., 443; Lord & Taylor, *v.* United States, 172 Fed. Rep., 282; T. D. 29851.)

This is a well-settled rule of construction, and by analogy and parity of reasoning "knitted" gloves should be held to include gloves partially knitted, unless the knitting be considered a minor element. In this case we consider the knitting the chief element.

In Goldenberg Bros. & Co.'s case, G. A. 6290 (T. D. 27113), it was contended that the term "lace articles" did not include both articles made from lace and lace articles constructed as articles from thread. The board held that it included both classes. This decision was successively affirmed by the Circuit Court, Southern District of New York, and the Circuit Court of Appeals, Second Circuit. (Goldenberg Bros. & Co. *v.* United States, 152 Fed. Rep., 658; T. D. 27894; and 157 Fed. Rep., 1003; T. D. 28715.)

So in this case the term "knitted gloves" is broad enough to cover such as are made from knitted cloth as well as those knitted on a machine.

It appears from the record that the art of weaving has not progressed to the point where it is possible to weave a glove; the only woven glove is one made from a woven fabric in the same manner as the glove under consideration—that is, by cutting and sewing. To hold that the provision for woven gloves includes only such as are woven into complete and finished gloves would be to nullify the statute and charge Congress with an absurdity; and to hold that gloves made from woven fabrics are woven gloves, while those made from knitted fabrics are *not* knitted gloves, would be an absurdity which is to be avoided.

The issue in this case is almost identical with that passed upon by the board in G. A. 3255 (T. D. 16537). The merchandise in that case was men's gloves made from knitted fabrics in the same way these are made. In that case it was contended that the goods were improperly classified as "knit wearing apparel," and that they were properly dutiable as "wearing apparel." The board there said:

> The percentage of articles of wearing apparel, including shirts, drawers, hosiery, and gloves, knit into form is so small that to give to the term "knit wearing apparel" the restricted meaning claimed by the appellants applicable thereto would be to defeat the plain intent of the lawmakers.

This statement is applicable here. It appears from the record that but a small proportion of gloves is made on the knitting machine; that practically all of them are made from fabrics, as in this case.

We find that the merchandise consists of knitted gloves and hold it dutiable under paragraph 328 at the rate assessed.

The protests are overruled and the decisions of the collector affirmed.

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In the cases at bar an attempt was made to show that the term "knitted gloves" has a meaning in trade that excludes gloves made from knit cloth and includes only such as are knit directly from yarn. The testimony is voluminous and conflicting, and falls far short of establishing a definite, general, and uniform trade understanding of these words. The witnesses for the importers uniformly testified that the gloves in question were known as "fabric gloves," and the witnesses for the Government as uniformly testified that the term "fabric gloves" had a well-defined significance in trade, and that it included all textile gloves, both knitted and woven, as distinguished from leather gloves, which was admitted on cross-examination by some of the importers' witnesses. By the testimony of the importers it is attempted to show that gloves knit from yarn, including some seamed gloves, are known to the trade as "knitted gloves," while the Government's witnesses testified that the terms "knitted" and "woven" were never used in trade in connection with gloves. From this record it is evident that there is no general, definite, and uniform trade understanding of the term "knitted gloves."

Furthermore, we do not think trade testimony relevant.

The Supreme Court, in Maillard *v.* Lawrence (16 How., 251), passed upon a similar question. We quote from their opinion:

> The effort has been to substitute for the literal and lexicographical and popular meaning of the phrase "wearing apparel" some supposed mercantile or commercial signification of these words, and to render subservient to that signification what was clearly accordant with the etymology of the language of the statute, with the essential purposes and action of the Government, and with the widespread, if not the universal, understanding of all who may not happen to fall within the range of a limited and interested class. In instances in which words or phrases are novel or obscure, as in terms of art, where they are peculiar or exclusive in their signification, it may be proper to explain or elucidate them by reference to the art or science to which they are appropriate; but if language which is familiar to all classes and grades and occupations—language the meaning of which is impressed upon all by the daily habits and necessities of all—may be wrested from its established and popular import in reference to the common concerns of life, there can be little stability or safety in the regulations of society. Perhaps within the compass of the English language, and certainly within the popular comprehension of the inhabitants of this country, there can scarcely be found terms the import of which is better understood than is that of the words "shawl" and "wearing apparel," or of "shawl" as a familiar, everyday, and indispensable part of wearing apparel. And it would seem to be a most extravagant supposition which could hold that, in the enactment of a law affecting the interests of the nation at large, the legislature should select for that purpose language by which the nation or the mass of the people must necessarily be misled. The popular or received import of words furnishes the general rule for the interpretation of public laws as well as of private and social transactions; and wherever the legislature adopts such language in order to define and promulge their action or their will, the just conclusion from such a course must be that they not only themselves comprehended the meaning of the language they have selected, but have chosen it with reference to the known apprehension of those to whom the legislative language is addressed and for whom it is designed to constitute a rule of conduct, namely, the community at large.

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In United States *v.* Klumpp (169 U. S., 209) the same court held inadmissible evidence tending to establish a commercial understanding of the phrase "manufactures of wool" that would exclude manufactures of worsted.

The Court of Customs Appeals in United States *v.* Salomon (1 Ct. Cust. Appls., 246; T. D. 31277) held that the terms "cotton" and "cotton waste" as used in paragraphs 313 and 548, tariff act of 1909, were not used in a denominative sense.

So, in the present case, we do not think the term "gloves, knitted" is used in any but the ordinary sense.

The other points involved have been fully discussed in G. A. 7092, quoted above.

The protests are overruled.

(T. D. 31910—G. A. 7284.)

Rosa rugosa—Rose plants.

Budded and grafted rose plants of a particular variety of *rosa rugosa* are dutiable under the provision in paragraph 264, tariff act of 1909, for "rose plants, budded, grafted, or grown on their own roots," and not under the same paragraph as "stocks, cuttings, or seedlings of * * * briar rose."—G. A. 4635 (T. D. 21922) distinguished.

United States General Appraisers, New York, October 5, 1911.

In the matter of protest 459130 of F. B. Vandegrift & Co. against the assessment of duty by the collector of customs at the port of New York.

Before Board 3 (WAITE, SOMERVILLE, and HAY, General Appraisers; Somerville, G. A., absent).

WAITE, *General Appraiser:* The merchandise in question is invoiced as "2500 *rosa rugosa.*" These are rose plants, and were assessed under the provision in paragraph 264, tariff act of 1909, for "rose plants, budded, grafted, or grown on their own roots, four cents each." They are claimed by the importers to be dutiable under the further provision in the same paragraph for "stocks, cuttings, or seedlings of * * * briar rose, three years old or less, one dollar per thousand plants."

Some testimony was taken in this case; and the board has had before it at various times heretofore a commodity known as the *rosa rugosa.* See G. A. 4635 (T. D. 21922). The *rosa rugosa*, it seems, is not the true briar rose which is raised in this country as a seedling for stock upon which to graft other roses for the production of rose plants, but is a native of the Orient; and while it is grown from the seed. it embraces several varieties, some of which are desirable as rose plants for the culture of roses to be used as cut flowers and for ornamental purposes. These desirable varieties are perpetuated and propagated by means of grafting or budding upon other stalks or stems, as in this

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case. When that operation is performed we are satisfied the goods are not covered by that portion of the paragraph claimed by the importers, but have then become rose plants, budded or grafted. The testimony upon the part of the importers is clear that the plants here in question are the budded and grafted rose plants of a particular variety of *rosa rugosa*, desirable as a rose in rose culture and for ornamental purposes. In the cases heretofore considered by the board where the *rosa rugosa* was held to be dutiable as a briar rose the plants have been seedlings, and we think we can not extend that ruling to include budded and grafted rose plants such as are in question here. The protest is therefore overruled.

(T. D. 31911—G. A. 7285.)

Books in chief value of leather.

Books in chief value of leather held to be subject to duty as manufactures of leather under the provisions of paragraph 452, tariff act of 1909, rather than as "books of all kinds * * * wholly or in chief value of paper," under paragraph 416 of said act.

SHARRETTS, G. A., dissents.

United States General Appraisers, New York, October 9, 1911.

In the matter of protest 487919 of Bowling Green Storage & Van Co. against the assessment of duty by the collector of customs at the port of New York.

Before Board 1 (SHARRETTS, MCCLELLAND, and CHAMBERLAIN, General Appraisers).

MCCLELLAND, *General Appraiser:* The merchandise which is the subject of this protest consists of books marked "A" on the invoice, which the appraiser returned as being in chief value of leather and subject to duty at the rate of 40 per cent ad valorem under paragraph 452 of the tariff act of 1909. The collector's assessment was in accordance with the appraiser's return. Protestants claim that duty should have been assessed at 25 per cent ad valorem under paragraph 416, or in the alternative at 35 per cent ad valorem under paragraph 420 of said act.

When the protest was called for hearing it was submitted on the appraiser's special report and the collector's letter. This special report of the appraiser states that—

Items marked "A" on invoice consist of books made in chief value of leather and were returned for duty at 40 per cent ad valorem, paragraph 452. In view of T. D. 30326 similar goods are now returned under paragraph 416 as books n. s. p. f., 25 per cent.

And the collector's letter reads:

Note appraiser's special report, *supra*, from which it appears that the merchandise (marked "A" on the invoice) is properly dutiable at only 25 per cent ad valorem under paragraph 416 of the tariff as books n. s. p. f. This office stands ready to reliquidate the entry accordingly if authorized to do so by your board.

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T. D. 30326, referred to in the appraiser's special report above quoted, is in the form of a letter of instruction from the Secretary of the Treasury to the collector of customs at the port of New York, who classified these books and assessed duty thereon, and reads as follows:

The department is in receipt of your letter of December 14, 1909, relating to the classification of books bound in leather and celluloid.

In view of the confusion existing in the minds of customs officers and importers throughout the United States as to the meaning of paragraph 416 of the tariff act of 1909 with respect to the duty imposed upon books bound in materials other than paper, the department deems it advisable to issue the following instructions:

The department is of opinion that Congress in enacting paragraph 416 intended to retain the same rate of duty upon books in general that had previously been imposed by paragraph 423 of the act of 1890, paragraph 311 of the act of 1894, and paragraph 403 of the act of 1897, and that the limitation placed upon the paragraph by the addition of the words not found in the previous law was intended to exclude from that rate books bound in such fancy or costly bindings as to be imported on account of their bindings and not for the sake of their intrinsic literary merit or their value as books.

In classifying importations for duty under this paragraph, therefore, you will in each instance determine whether or not the books are bound in a manner appropriate to their contents, taking into consideration the quality of the binding and workmanship as compared with the quality of the paper and printing and the character of the text; and you will pass for entry at the rate of 25 per cent ad valorem all *bona fide* books printed upon paper and appropriately bound, and exclude from that rate only such as are contained in a binding obviously disproportionate in value to the value of the contents as ascertained in accordance with the principles above set forth.

We respect the foregoing letter as expressing a learned opinion of the congressional intent in framing paragraph 416 of the existing tariff law, but as the case comes to us we do not regard it as changing the status of this issue from that of any other which comes before the board for determination under the law. It is the undoubted right of the Government to abandon its classification and formally concede the legality of a protestant's claim, and a protestant may, with equal right, waive or abandon his claim, or both parties may unite in a consent to the dismissal of a protest; but neither of these propositions is before us. It is the duty of appraisers to ascertain, estimate, and appraise the actual foreign market value and wholesale price of all merchandise imported into the United States (subsection 10 of section 28, tariff act of 1909); but in addition to determining foreign market value it has long been the practice of appraisers, for the guidance of collectors, to indicate the classification the merchandise should take, which includes, of course, a statement of the component material of chief value in the merchandise in all cases where the rate of duty to be assessed will be regulated thereby.

The duty of classifying merchandise and assessing duty thereon is imposed upon the collector by subsection 14 of the tariff act of 1909, wherein it is provided that his decision as to the rate and amount of duties chargeable upon imported merchandise shall be final and con-

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clusive unless the owner, importer, consignee, or agent, or the person paying such duties shall give notice in writing of his dissatisfaction with such decision. All of these statutory requirements were met in this case.

The appraiser, in addition to appraising the books in question, returned them as being in chief value of leather, and this latter fact of chief value he affirms in his special report quoted above. He evidences no change of opinion either as to component material of chief value or the rate of duty which should be assessed, but indicates that his action in now returning similar books for duty at 25 per cent ad valorem under paragraph 416 is in obedience to the instructions contained in T. D. 30326, *supra.*

There is no rule more definitely settled and more uniformly followed than that the action of a public officer must be presumed to have been correctly taken unless the contrary is shown by a preponderance of competent proof. In support of this rule we deem it unnecessary to cite a single authority.

As this case comes to us we have the undisputed finding of the appraiser that the books are in chief value of leather (reiterated in his special report on the protest) and the decision of the classifying officer as to the rate and amount of duties due on the merchandise. Protestant failed when the protest was called for hearing to submit any evidence in support of either of the claims made, electing to submit it for decision on the reports of the appraiser and collector, based upon T. D. 30326, *supra.*

On such a record we must assume, and we find it as a fact, that the books in issue are in chief value of leather. This leads us to the consideration of the claims set forth in the protest.

Paragraph 416, under which the 25 per cent claim is made, in so far as applicable, reads as follows:

> Books of all kinds, bound or unbound, including blank books, slate books and pamphlets, engravings, photographs, etchings, maps, charts, music in books or sheets, and printed matter, all the foregoing wholly or in chief value of paper, not specially provided for in this section, twenty-five per centum ad valorem. * * *

And paragraph 420, under which the 35 per cent claim is made, reads:

> Manufactures of paper, or of which paper is the component material of chief value, not specially provided for in this section, thirty-five per centum ad valorem.

The language of the book paragraph of the tariff act of 1897 (403) was reenacted in paragraph 416 of the tariff act of 1909 with the significant words of limitation "wholly or in chief value of paper" added.

The congressional intent in adding these words of limitation is too plain, we think, to admit of doubt of their meaning as applied to books.

Paragraph 452, under which duty was assessed, provides for "manufactures of leather or of which leather is the component material of

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chief value, not specially provided for," and there is therefore not only no warrant for holding that these books are subject to duty at either one of the rates claimed, but to so hold would seem to be in direct disregard of this provision of the statute. This conclusion is in harmony with the board's decision on protest 427905 of P. H. Petry Co., Abstract 24421 (T. D. 31146), and Abstract decision 25100 (T. D. 31429), in so far as it is in conflict herewith, is hereby overruled.

The decision of the collector is affirmed.

DISSENTING OPINION.

SHARRETTS, *General Appraiser:* I dissent. In my opinion the board should have sustained the protestants' claim that the books in question are dutiable at 25 per cent ad valorem under paragraph 416 of the act of 1909. For almost half a century the duty on books has remained unchanged at 25 per cent ad valorem, and that regardless of whether they were bound or unbound. It would seem that Congress had in mind books exclusive of their covers, and the reenactment in each succeeding tariff of the phrase "bound or unbound" was designed to avoid uncertainty of description and resultant litigation.

Notwithstanding the precaution adopted by the legislators, controversies arose as to whether loose leaves comprising a complete work were books. The court held they were (Macmillan Co. *v.* United States, 116 Fed. Rep., 1018), and Congress in providing for books under the existing law, we can presume, had in mind printed sheets, the binding thereof being merely an incidental feature not intended to affect the classification or duty chargeable thereon except in so far as it increased the value of the book. We are confronted with the fact that uninterruptedly for a period approximating 50 years printed leaves comprising a book were charged with a duty of 25 per cent, regardless of whether they were bound or not. That, coupled with the further fact that the provision in the present act for "books of all kinds, bound or unbound," is a reenactment of the provisions of former acts, establishes a fair inference that Congress intended in the act now in force that books composed wholly or in chief value of paper were to continue to pay duty at 25 per cent ad valorem without regard to whether they were bound or not and regardless of whether the binding was of greater or less value than the printed books.

At the hearings before the different committees of Congress there is nothing on record to indicate that the domestic interests sought to have the rate increased on dutiable books. On the contrary, in volume 6, page 6356, Hearings before the Committee on Ways and Means, the International Brotherhood of Bookbinders expressly stated:

> In the first place, we must say that we have no fault to find with the tariff [duty] as at present levied. Our objections are principally against three of the clauses [in the free list].

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The very incomplete and somewhat meager list of litigated cases cited in the Notes on Tariff Revision prepared for the use of the Committee on Ways and Means, House of Representatives, Sixtieth Congress, second session, page 542, furnishes the most cogent explanation for the incorporation in paragraph 416 as new matter the words "composed wholly or in chief value of paper." It is common knowledge that Congress in framing a tariff employs language to meet judicial interpretations of the provisions of former acts. The amendment suggested in the notes on revision to paragraph 403 of the act of 1897 was discarded and in lieu thereof the phrase "composed wholly or in chief value of paper" was inserted to effect the same result, namely, to eliminate all future controversies. It is worthy of consideration that every item enumerated in paragraph 416 had at some time been involved in litigation except "printed books, bound." Even printed books in the form of loose sheets were, as above stated, the subject of suit.

Applying the words "composed wholly or in chief value of paper" to printed books in their primary condition, regardless of whether bound or unbound, the provision therefor will be, as no doubt intended, confined to books printed on paper in contradistinction to those printed on parchment, celluloid, cotton, or silk, under which construction of the law disputes can not arise. On the other hand, classification dependent upon the respective values of books and their binding will result in constant litigation, involving the almost hopeless task of establishing, with any degree of certainty, facts upon which to predicate a decision, for who is there wise enough to determine the precise value of the time and labor expended by the author who prepared the matter contained in the printed paper book before it had been bound, a prerequisite in the determination of which is the greater value, the paper book so prepared or the piece of leather covering it.

Dickens would hardly have been flattered had he been told that the principal value of his books was in their covers. Technical and professional books having a limited circulation sell for $10 or $15 each. Popular novels running through four or five editions and aggregating several hundred thousand copies bound in the same material, having the same number of sheets, and printed on the same quality of paper, sell for $1.50 each. This difference in the selling price represents the compensation of the authors that accrues the moment each book comes from the press, and is not affected by the character of the binding, which is a matter of choice with the publisher. It is not necessary to pursue this line of argument further, except to add that the law must be construed, so far as the language thereof will permit, to avoid impossible or absurd results and to obviate litigation.

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Turning now to a consideration of adjudicated cases and their bearing upon the issue presented in this case, paragraph 512 of the tariff act of 1890 provided for "books * * * bound or unbound, * * * which shall have been printed and bound or manufactured more than twenty years at the date of importation." An importation of books that had been printed more than 20 years and rebound within that period of time was held to be exempt from duty under paragraph 512, the court expressing the opinion that the books having been printed and manufactured more than 20 years the rebinding was in the nature of repairing the books. T. D. 10800 was cited with approval *In re* Boston Book Co. (50 Fed. Rep., 914). The only inference deducible from this decision is that the court regarded the binding as merely an incident in establishing the antiquity of the printed books, and they having been originally bound more than 20 years, although the books in the condition imported had been *bound* within that period, they were nevertheless included within the provisions of paragraph 512.

Congress, in the act of 1894, paragraph 410, approved of this decision of the court and eliminated the words "and bound or manufactured," the paragraph reading, "books * * * bound, or unbound, * * * which shall have been printed more than twenty years." The act of 1897, paragraph 501, and the present act, paragraph 517, both admit books free that have been printed more than 20 years regardless of whether they are bound or unbound. As in paragraph 416, the subject matter of legislation was printed books, and the words "bound or unbound" were used for the purpose of establishing their identity as books in the different stages of manufacture.

In G. A. 4525 (T. D. 21502) the board held that women's hats composed in chief value of straw, trimmed with silk, silk being the component material of chief value in the completed hats, were dutiable at 50 per cent ad valorem under paragraph 409 of the act of 1897, and not at 60 per cent ad valorem under paragraph 390 of the same act as wearing apparel composed in chief value of silk. The board says:

> We are of the opinion that hats, bonnets, or hoods, when composed wholly either of straw, chip, grass, palm leaf, willow, osier, or rattan, or a combination of these substances, or of a portion of them, or of which they or any of them is the component material of chief value, are, if trimmed, dutiable at 50 per cent ad valorem, irrespective of the value of the trimming as compared with the value of the article without the trimming.

G. A. 5734 (T. D. 25440), in passing upon like merchandise, upheld the correctness of the prior decision, and such hats have been so classified for duty ever since.

The board, in G. A. 6411 (T. D. 27541), reached a different conclusion with respect to fur hats trimmed with silk, the latter material

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being of more value than the fur. A reference, however, to paragraph 432 of the act of 1897 will disclose the fact that a specific rate of duty was imposed upon hats, bonnets, or hoods dependent upon the value of the fur. Hence the case was, as stated in the board's decision, differentiated from G. A. 5734, *supra.*

Paragraph 112 of the act of 1897 provided for "*all* mirrors, not exceeding in size one hundred and forty-four square inches, *with or without frames or cases* * * * of which glass or paste is the component material of chief value." This board, in G. A. 6420 (T. D. 27560), held that certain glass mirrors in shell frames, shell being the component material of chief value in the completed article, were dutiable at 45 per cent ad valorem under paragraph 112, as mirrors in frames, regardless of the fact that the shell frames were of more value than the glass mirrors. Congress approved of the conclusion reached by the board in this case and reenacted without change the provisions of paragraph 112 of the act of 1897 in paragraph 109 of the present tariff. See Abstract 26012 (T. D. 31744). For the purpose of easy reference, we quote the appropriate provisions of paragraph 112 of the act of 1897 and paragraph 416 of the act of 1909:

112. All mirrors * * * with or without frames or cases * * * of which glass * * * is the component material of chief value * * *.

416. Books of all kinds, bound or unbound, * * * wholly or in chief value of paper * * *.

The scope of these two paragraphs is identical in all of their essential features, and Congress having approved of the conclusion of the board that mirrors in frames of shell were dutiable as mirrors composed in chief value of glass, notwithstanding the fact that the shell frames were of more value than the mirrors, we must infer that, applying the same rule of construction, books composed in chief value of paper, bound, are dutiable at 25 per cent ad valorem, although the binding is of more value than the books.

Books are typical articles representing the highest state of civilization that through the medium of the mind entertain and enlighten. In all tariffs they have been the subject of special legislation and hence accorded exceptional favors in the direction of low rates and exemption from duty. The free list of the present act treats books, bound or unbound, with the same liberality as did all former acts, and I can not believe that in the dutiable list, because these articles happen to be covered with a skiver of leather, Congress intended they should be relegated to a catch-all clause and classified along with bags, baskets, belts, satchels, and other miscellaneous manufactures of leather.

In consonance with the views herein set forth, I think the protest should have been sustained. I think it should have been sustained at any rate upon entirely different grounds. The duty of the General Appraisers is to settle all disputes arising between collectors and im-

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porters involving the rate and amount of duties chargeable upon imported merchandise. In cases pending before the board, if importers abandon their contention that the collector erred, there is no longer any dispute, and the uniform practice of the General Appraisers has been in such cases to affirm the collector's decision without examining into the merits of the case, and the rule that applies to one of the parties to the litigation must apply with equal force to the other. I think it would be desirable and perhaps more effective if the collector, instead of saying, "I am willing to reliquidate the entry in accordance with the importers' claim, if so directed by your board," would say (referring to the particular article or articles he had in mind) "I hereby consent to an order of reversal."

It is the practice for judicial tribunals to discourage litigation as far as practicable; hence, an order of dismissal, reversal, or affirmance by consent is always granted without the court's delving into the merits of the case. My colleagues held, and with much force, that inasmuch as the appraiser both in his original and supplemental report stated that leather was the component material of chief value in the books in question, nevertheless "in view of T. D. 30326 he is now returning similar goods at 25 per cent under paragraph 416 as books n. s. p. f.," and, further, the collector in transmitting the protest to the board wrote:

> Note appraiser's special report, *supra*, from which it appears that the merchandise is properly dutiable at only 25 per cent ad valorem under paragraph 416 as books n. s. p. f. This office stands ready to reliquidate the entry accordingly if authorized to do so by your board.

The unrebutted evidence, they contend, shows that the disputed books are composed in chief value of leather, therefore it became their duty, regardless of the collector's final action, to decide the case in accordance with the requirements of paragraphs 416 and 452 of the act of 1909. In this conclusion I do not agree. The appraiser is not the classifying officer, and his statement that leather is the component material of chief value in the books is not, as in reappraisement cases, conclusive, although entitled to great weight. The appraiser's advisory report to the collector is a mere expression of opinion that can be adopted or rejected by the latter officer as he may elect.

It is probable, as held in the decision, that both the appraiser and collector were influenced in their final action by T. D. 30326. It does not appear definitely, however, that the collector did not exercise his statutory powers independent of T. D. 30326 (see Zante currant case, 73 Fed. Rep., 183), and reach the conclusion that the disputed books are properly dutiable under paragraph 416 on entirely different grounds from that set forth by the Treasury Department. Be that as it may, when the case reached the board for decision there was no

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longer any dispute between the collector and importer, they having agreed that the merchandise was properly dutiable at 25 per cent ad valorem under paragraph 416, and the board should have reversed the collector's decision by consent.

The importers, through their attorney, anticipating such a result in accordance with the practice of the board, submitted their case on the record, not believing it necessary to prove by evidence error on the part of the collector admitted by him. Abstract 24421 (T. D. 31146), cited by my colleagues, involved a protest included in a schedule of defaulted cases, and has no more controlling force than Abstract 25100 (T. D. 31429), where the board reversed the collector by consent, the issue being the same as here presented.

In my opinion, the conclusion reached by the Treasury Department that books similar to those now on appeal were dutiable at 25 per cent ad valorem under paragraph 416 is sound and accords with the intent of Congress, although I would have arrived at the same conclusion by a somewhat different process of reasoning from that set forth in T. D. 30326.

(T. D. 31912.)

Abstracts of decisions of the Board of General Appraisers.

Board 1.—Sharretts, McClelland, and Chamberlain. *Board 2.*—Fischer, Howell, and Cooper. *Board 3.*—Waite, Somerville, and Hay.

BEFORE BOARD 1, SEPTEMBER 30, 1911.

No. 26759.—ARTICLES OF PERSONAL ADORNMENT—ARTICLES OF UTILITY.—Protest 500816 of Stearn & Co. (Cleveland), and protests 429396, etc., of William Demuth & Co. (New York). Opinions by Sharretts, G. A.

Gun-metal cigar and cigarette cases, and bags, purses, mirrors, and photograph frames, classified as articles of personal adornment under paragraph 448, tariff act of 1909, were held dutiable as smokers' articles (par. 475) or manufactures of metal, glass, or paste (par. 199 or 109), as claimed by the importers.

No. 26760.—IMITATION PRECIOUS STONES, PIERCED.—Protests 452543–34592, etc., of T. Buettner & Co. (Chicago).

SHARRETTS, *General Appraiser:* These cases were submitted for decision on behalf of the importers without proof other than that furnished by the official samples of the merchandise. These samples show the articles in question to be composed of paste made to imitate diamonds, rubies, emeralds, opals, or other precious stones, being pierced with two vertical holes placed on opposite sides near the edge and backed with foil to add to their brilliancy. Duty was assessed thereon at 35 per cent ad valorem as beads under paragraph 421 of the act of 1909, and the protestants claim that the merchandise is dutiable as imitation precious stones at 20 per cent ad valorem under paragraph 449 of said act.

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The merchandise in question is identical with that passed upon by this board in G. A. 6380 (T. D. 27420), therein held not to be beads but imitation precious stones, and, as such, dutiable at 20 per cent ad valorem under paragraph 435 of the tariff act of 1897. No appeal was taken from that decision, which was dated June 13, 1906, but it was acquiesced in by the Treasury Department and followed at all ports during the balance of the life of the tariff act of 1897. Paragraph 449 of the present act, however, limits imitation precious stones, provided for therein, to those suitable for use in the manufacture of jewelry. It is contended on behalf of the Government that the purpose of the two vertical holes in each of the disputed articles in question was intended as a convenient means of stitching them on theatrical garments.

The burden of proof is on the protestants to establish the correctness of their claim; having failed to do so, we overrule the protests. The collector's classification of the merchandise as beads, although erroneous, stands affirmed.

No. 26761.—Imitation Jet.—Protests 501448–37173 of A. M. Holzheimer (Chicago). Opinion by Sharretts, G. A.

Protests sustained as to imitation-jet articles on the authority of United States *v.* Beierle (1 Ct. Cust. Appls., 457; T. D. 31506).

No. 26762.—Toy Watches.—Protest 384398 of J. W. Robinson Co. (Los Angeles). Opinion by Sharretts, G. A.

Small toy watches attached to flimsily constructed bracelets and chatelaine pins, classified as articles of personal adornment under paragraph 448, tariff act of 1909, were held dutiable as toys (par. 431). Protest sustained.

No. 26763.—Protests Overruled.—Protests 286680–25913, etc., of C. D. Stone & Co. et al. (Chicago), and protests 443332, etc., of German-American Glass Co., and protests 508390, etc., of Kohn, Adler & Co. (Philadelphia). Opinions by Sharretts, G. A.

Protests overruled for want of merit.

No. 26764.—Olive Oil in Tins.—Protests 316191, etc., of Prospero Viggiano (New York), and protest 480510 of Githens, Rexsamer & Co. (Philadelphia). Opinions by McClelland, G. A.

Protests sustained as to olive oil in commercial 5-gallon tins. Note Abstract 25938 (T. D. 31720).

No. 26765.—Fitted Leather Cases.—Protests 450097, etc., of Lord & Taylor (New York). Opinion by McClelland, G. A.

Boxes made of leather with buffing tops containing a metal nail file, scissors, and a nonalcoholic nail polish, which were inadvertently classified as a nonalcoholic toilet article under paragraph 67, tariff act of 1909, were held dutiable as fitted leather cases (par. 452). Protest 450097 sustained.

No. 26766.—Balata Belting.—Protest 343725 of Kirkman & Vail (Philadelphia). Opinion by McClelland, G. A.

Protest sustained as to balata belting. G. A. 6640 (T. D. 28298) and Robins *v.* United States (1 Ct. Cust. Appls., 252; (T. D. 31278) followed.

No. 26767.—Feather Articles.—Protest 318144 of Leon Rheims Co. (New York). Opinion by McClelland, G. A.

Protest sustained as to feather articles on the authority of United States *v.* Berlinger (167 Fed. Rep., 800; T. D. 29577).

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No. 26768.—Bone Fertilizer.—Protest 453064 of F. H. Shallus (Baltimore). Opinion by McClelland, G. A.

Bone fertilizer classified as a manufacture of bone under paragraph 463, tariff act of 1909, was held free of duty as bones fit only for fertilizing purposes (par. 515), as claimed by the importer. G. A. 7154 (T. D. 31233) followed.

No. 26769.—Willow Baskets.—Protest 484397 of William Mills & Son (New York). Opinion by McClelland, G. A.

Protest sustained as to willow baskets. Brody *v.* United States (T. D. 31573) followed.

No. 26770.—Beaver Strips.—Protests 498661, etc., of M. Schmitt et al. (New York). Opinion by McClelland, G. A.

Protests sustained as to beaver strips on the authority of G. A. 7109 (T. D. 30990).

No. 26771.—Protests Overruled.—Protest 445780 of M. Bachert, protest 471313 of Davies, Turner & Co., protests 499495, etc., of L. Dejonge & Co. et al., protest 435203 of Massce & Co., and protest 391623 of Scheuer & Co. (New York). Opinions by McClelland, G. A.

Protests overruled for want of merit.

Before Board 2, September 30, 1911.

No. 26772.—Cotton Bandings—Wearing Apparel.—Protests 448844, etc., of Maffei & Co. (New York).

Cooper, *General Appraiser:* Duty was collected upon the merchandise in question at the rate of 60 per cent ad valorem under the provision in paragraph 349, tariff act of 1909, for "bands or bandings." Claims for lower rates of duty are made under paragraph 316 as countable cotton cloth, and under paragraph 324 as cotton wearing apparel.

The merchandise consists of strips of cotton cloth, about 6 or 7 inches wide, woven in various designs, and imported in lengths of from 36 to 40 meters. The evidence shows that the material is cut to suitable lengths, and sold to Italian people, who use the same to wrap around infants as an outer garment.

These articles do not fall within the definition of cotton cloth as given in paragraph 320, "all woven fabrics of cotton in the piece or cut in lengths, * * * and shall not include any article, finished or unfinished, made from cotton cloth."

In construing the provision for "tapes" in paragraph 349, the Court of Customs Appeals and the board have held that said provision is not limited to such tapes as are ornamental and are *ejusdem generis* with the other articles mentioned in that paragraph. Burlington Venetian Blind Co. *v.* United States (1 Ct. Cust. Appls., 374; T. D. 31456). G. A. 7206 (T. D. 31495). In harmony with this principle, the provisions for "bands" and "bandings" can not be construed to include only narrow tapelike articles used in dressmaking, as a binding, etc., as contended by the importers. There is no evidence before us as to what would be known commercially as bands or bandings. We think the articles may properly be described as bandings in a general and popular sense. While there is some evidence tending to show that they are articles of wearing apparel, they are not wearing apparel in common and general use, and ordinarily would not be so considered.

We conclude that the merchandise is properly dutiable under paragraph 349, as classified, and overrule the protests.

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BEFORE BOARD 1, OCTOBER 2, 1911.

No. 26773.—TOY MAGIC-LANTERN SLIDES.—Protest 468305 of Robert B. Ways (Baltimore). Opinion by Sharretts, G. A.

Toy magic-lantern slides classified as glass slides for magic lanterns under paragraph 107, tariff act of 1909, were held dutiable as toys (par. 431), as claimed by the importer. United States *v.* Borgfeldt (1 Ct. Cust. Appls., 370; T. D. 31455) followed.

No. 26774.—ARTICLES OF PERSONAL ADORNMENT—ARTICLES OF UTILITY.—Protest 443296 of Emery, Bird, Thayer Dry Goods Co. (Kansas City), and protest 469464 of Mark Cross Co., and protests 429525, etc., of C. A. Haynes & Co. (New York. Opinions by Sharretts, G. A.

Gun-metal mesh bags, gold pencils, and military ornaments, invoiced as "bronzed globe badges," were classified as articles of personal adornment under paragraph 448, tariff act of 1909, and held dutiable as manufactures of metal (par. 199). Protests sustained. Note G. A. 7153 (T. D. 31206).

No. 26775.—PROTESTS OVERRULED.—Protests 474500, etc., of Salomon & Newman (New York). Opinion by Sharretts, G. A.

Protests overruled for want of merit.

BEFORE BOARD 2, OCTOBER 2, 1911.

No. 26776.—CYLINDRICAL METAL CONTAINERS.—Protests 422265, etc., of E. I. Dupont de Nemours Powder Co. et al. (Wilmington, New Orleans, Philadelphia, and New York). Opinion by Fischer, G. A.

Iron drums containing crude glycerin, classified as cylindrical or tubular vessels under paragraph 151, tariff act of 1909, were claimed to be the usual containers of merchandise subject to specific duty and therefore nondutiable. Protests overruled. United States *v.* Marx (1 Ct. Cust. Appls., 152; T. D. 31210) followed.

BEFORE BOARD 3, OCTOBER 2, 1911.

No. 26777.—ARTISTIC ANTIQUITIES.—Protest 531514 of M. J. Corbett & Co., and protest 494663 of A. Villoresi (New York), and protest 491751 of H. B. Thomas (San Francisco). Opinions by Waite, G. A.

The board sustained the importers' claims that mirror frames, furniture, various metal articles, and fabrics, and two columns were free of duty as artistic antiquities under paragraph 717, tariff act of 1909.

No. 26778.—TAPIOCA—STARCH.—Protest 489818 of Bow Yuen & Co. (Portland, Oreg.).

WAITE, *General Appraiser:* The merchandise has been assessed as starch under paragraph 296, tariff act of 1909, and is claimed to be free of duty under paragraph 689, providing for "tapioca, tapioca flour, cassava or cassady." An analysis made by the Government chemist shows that it is tapioca starch. The testimony is to the effect that this commodity is sold almost exclusively to the Chinese trade, and is used in making Chinese cakes, noodles, and other edible articles, and is not sold for starch. In Abstract 7943 (T. D. 26694) the board held that merchandise which had been analyzed as tapioca starch was free of duty under the provision in the free list for "tapioca," as being substantially the same product that was so classified in Chew Hing Lung *v.* Wise (176 U. S., 156; T. D. 21954). Note also G. A. 4661 (T. D. 22021). On authority of these decisions we sustain the protest.

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No. 26779.—Lily Roots—Yuk Juk.—Protests 344367, etc., of Tai Lung & Co. et al. (New York). Opinion by Waite, G. A.

The board held that lily roots and yuk juk, sliced and dried, were dutiable as vegetables in their natural state under paragraph 257, tariff act of 1897, as claimed by the importers.

No. 26780.—Fruits in Brine—"Umeboshi."—Protests 488277, etc., of Y. Okamaru et al. (Port Townsend).

Waite, *General Appraiser:* The goods in question here are invoiced as "salted fruits, umeboshi." They were entered as fruits in brine under paragraph 571 of the tariff act of 1909, and are claimed to be free thereunder. They were assessed as fruits preserved in their own juices under paragraph 274.

What appears to be this same fruit, a small plum-like fruit coming from the ume tree, has been passed upon by this board at different times, but from the record here the treatment of the fruit appears to be somewhat different. The testimony in this case shows the preparation is as follows:

> They usually take the green plums and put plenty of salt in and preserve for a while, and take it out and dry it, put some more salt in and some more water in and preserve it.

Without quoting further we think the testimony as a whole shows that the juice, so far as it can be, is dried out of the fruit and it is placed in a brine of water and salt for preservation, and in that condition is eaten as a relish. This case differs from Ozaki's case, G. A. 6237 (T. D. 26931), in that no water appears to have been added in that case, the fruit being found to be preserved in its own juices. In this case, however, we think the preservation is in brine. We therefore sustain the protest, holding this commodity should be free of duty under paragraph 571 as fruits in brine.

No. 26781.—Protests Overruled.—Protest 496746 of F. H. Shallus (Baltimore), protests 369688, etc., of McLelland & Brigham Co. et al. (Boston), protests 497214, etc., of H. Horsfield (New York), protests 417584, etc., of Grant Brothers Construction Co. (Nogales), protest 480611 of San Diego & Arizona Railway Co. (San Diego), and protests 354223, etc., of Lun Chong & Co. et al., and protests 472772, etc., of Wing Yee Chong & Co. et al. (San Francisco). Opinions by Waite, G. A.

Protests overruled for want of merit.

Before Board 1, October 3, 1911.

No. 26782.—Shida Baskets.—Protests 459278–35710, etc., of G. W. Sheldon & Co. (Chicago).

Shida baskets classified as manufactures of willow under paragraph 212, tariff act of 1909, were held dutiable as baskets of wood (par. 214), as claimed by the importers.

McClelland, *General Appraiser:* * * * In Abstract decision 19175 (T. D. 29099) the board held that shida baskets were dutiable by similitude as manufactures of willow under paragraph 206 of the tariff act of 1897. In Brody *v.* United States (T. D. 31573) the Court of Customs Appeals held that for the purposes of the tariff, as applied to baskets, willow is wood, and that baskets made of willow are subject to duty under the provision in paragraph 214 of the tariff act of 1909 for baskets of wood. For the reasons stated in Abstract 19175, *supra*, it follows that shida baskets must take the same duty as baskets of wood. * * *

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No. 26783.—Hinoki Baskets.—Protests 307791, etc., of Morimura Bros. (New York). Opinion by McClelland, G. A.

Baskets made of strips and shavings of wood, twisted and braided, classified as manufactures of wood under paragraph 208, tariff act of 1897, were claimed to be dutiable as manufactures of chip (449). Protests sustained. Morimura *v.* United States (167 Fed. Rep., 687; T. D. 29566) followed.

No. 26784.—Kromoline—Grease—Oil.—Protests 530548, etc., of I. Levinstein & Co. (Boston). Opinion by McClelland, G. A.

The board held that kromoline was free of duty under paragraph 580, tariff act of 1909, as grease or oil used "for stuffing or dressing leather," as claimed by the importers. G. A. 7246 (T. D. 31743) followed.

No. 26785.—Chemical Salt.—Protest 442725 of Vitro Manufacturing Co. (Pittsburgh). Opinion by McClelland, G. A.

Merchandise classified under paragraph 56, tariff act of 1909, as a color was claimed to be dutiable as a chemical salt (par. 3). Protest sustained.

No. 26786.—Extract of Vegetable Origin.—Protest 435990 of William H. Thornley (San Francisco). Opinion by McClelland, G. A.

A commodity invoiced as "solid chestnut tanning extract" and classified under paragraph 22, tariff act of 1909, as extracts of bark, was held dutiable under the same paragraph as an extract of vegetable origin, nonalcoholic, and not medicinal, as claimed by the importer.

No. 26787.—Fur Sheepskins.—Protests 422258, etc., of Gordon & Ferguson (St. Paul). Opinion by McClelland, G. A.

Sheepskins with the wool on, classified as wool on the skin under paragraphs 369 and 371, tariff act of 1909, were claimed to be free of duty as fur skins (par. 574). Protests sustained. United States *v.* Heckman (1 Ct. Cust. Appls., 272; T. D. 31318) followed.

No. 26788.—Willow Baskets—Willow Hampers.—Protests 409536, etc., of A. Hauptman, and protest 496262 of F. A. O. Schwarz (New York), and protests 435963, etc., of K. Fujiwara et al. (San Francisco). Opinions by McClelland, G. A.

Protests sustained as to willow baskets and hampers on the authority of Brody *v.* United States (T. D. 31573).

No. 26789.—Sawdust—Waste.—Protests 496094, etc., of Badische Co. (New York).

Merchandise returned by the appraiser as "wood flour" and classified as a manufacture of wood under paragraph 215, tariff act of 1909, was claimed to be dutiable as waste (par. 479). Protests sustained.

McClelland, *General Appraiser:* * * * The evidence on behalf of protestant, while not as direct and comprehensive as we think might have been produced, is sufficient to shift the burden to the Government of sustaining its classification.

The vice president of the importing company testifies that his company buys and sells this product as sawdust, and the official examiner who passed it for advisory classification states that the return as "wood flour" does not express his judgment; that he took samples of the importation and submitted them to importers of wood

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flour, and that the "weight of the testimony" he procured was that it was not wood flour, but sawdust. This statement the examiner supplements with the declaration that he considers the merchandise sawdust.

The Government having offered no proof in support of its classification, we must, on such a record, find the merchandise to be waste, subject to duty as claimed. G. A. 6526 (T. D. 27866).

Collector's decision reversed.

No. 26790.—Fitted Willow Baskets.—Protests 477551, etc., of Mark Cross Co. (New York). Opinion by McClelland, G. A.

Luncheon baskets made of willow fitted with the necessary utensils and classified as "baskets * * * permanently fitted * * * with * * * dining or luncheon * * * sets" under paragraph 452, tariff act of 1909, were held dutiable as manufactures of metal (par. 199), as claimed by the importers, the appraiser having reported that they should have been so classified.

No. 26791.—Fur Skins, Dressed—Goatskins.—Protests 418155, etc., of W. E. Allum et al. (New York). Opinion by McClelland, G. A.

Dressed natural goatskins classified as manufactures of fur under paragraph 439, tariff act of 1909, were held dutiable as furs dressed on the skin under the same paragraph, as claimed by the importers.

No. 26792.—Grasses Treated with Sulphur Compounds.—Protests 482889, etc., of E. B. Goodman & Co. (New York).

Grasses classified under paragraph 438, tariff act of 1909, relating to "artificial or ornamental * * * fruits, grains, leaves, flowers, and stems, or parts thereof," were claimed to be free of duty as "fibrous vegetable substances, not dressed or manufactured in any manner" (par. 578) or "vegetable substances, crude or unmanufactured" (par. 630).

McClelland, *General Appraiser:* * * * The testimony offered on behalf of protestants fails to support either of the claims made, and the chemical analysis of Exhibit 1 in the case shows that it has been subjected to treatment with "sulphur compounds." We therefore overrule the protests.

No. 26793.—"Curriers' Grease"—Distilled Wool Grease.—Protests 440193, etc., of J. W. Greenhalgh & Co. (Boston).

Merchandise invoiced as "Curriers' grease" and classified as wool grease, refined, under paragraph 290, tariff act of 1909, was claimed to be dutiable as crude wool grease, under the same paragraph.

McClelland, *General Appraiser:* * * * From the evidence in the case there is no mistaking the fact that the merchandise is not what it is claimed to be by protestants, and we are inclined to think that it is equally clear that it is not refined wool grease as contended by the Government. Accepting the evidence of the chemist, who not only analyzed the merchandise, but passed it officially as examiner, we are forced to the conclusion that this grease is a *product* of wool grease, the result of distillation. It is therefore neither a crude wool grease nor such a grease refined or improved in value or condition. It has ceased to be either and has become a new article with a new name suitable for purposes to which, so far as the record shows, wool grease is not adapted. It is our view that it is properly subject to duty at the rate of 25 per cent ad valorem under the provision for all greases not specially provided for in paragraph 3 of the said tariff act of 1909, but this claim not being made, the protests must be overruled, and the assessments of duty by the collector must therefore stand.

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No. 26794.—PROTESTS OVERRULED.—Protest 439508-34160 of Nichols & Co. and protests 447761-34795, etc., of Trans-Continental Freight Co. et al. (Chicago). Opinions by McClelland, G. A.

Protests overruled for want of merit.

No. 26795.—ARTICLES OF PERSONAL ADORNMENT—SMOKERS' ARTICLES.—Protests 424710, etc., of A. J. Dale (New York). Opinion by Chamberlain, G. A.

Cigarette cases and cigar lighters were held dutiable as smokers' articles under paragraph 475, tariff act of 1909, as claimed by the importer, rather than as articles of personal adornment (par. 448), as assessed. G. A. 7102 (T. D. 30942) and G. A. 7103 (T. D. 30943) followed.

No. 26796.—PROTESTS OVERRULED.—Protests 418244, etc., of Emrich, King & Schorsch (New York). Opinion by Chamberlain, G. A.

Protests overruled for want of merit.

BEFORE BOARD 2, OCTOBER 3, 1911.

No. 26797.—COTTON CLOTH.—Protests 452817, etc., of Kaskel & Kaskel. Opinion by Cooper, G. A.

Certain cotton cloth was claimed to have been improperly subjected to the additional duty provided in paragraph 323, tariff act of 1909, for such goods when mercerized. Protests sustained.

BEFORE BOARD 3, OCTOBER 3, 1911.

No. 26798.—ENTIRETIES—ARTISTIC ANTIQUITIES—DECORATED CHINA WITH METAL TRIMMINGS.—Protests 487915, etc., of Bowling Green Storage & Van Co. (New York).

Protest 487915 is not supported by any evidence and is therefore overruled.

Protest 487916 has been abandoned and is overruled for that reason.

WAITE, *General Appraiser:* Protest 487917 relates to certain articles of china or porcelain decorated and embellished with heavy metal trimmings more or less ornate and artistic in design. The metal trimmings or decorations are included in the same invoice, but itemized separately from the porcelain part of the articles. The goods are claimed by the importers to be dutiable separately—that is, the porcelain from the metal—and it is claimed that the porcelain should be admitted free under the latter part of paragraph 717, tariff act of 1909, as an antique, and the metal as manufactures of metal, it being conceded that the metal part is not sufficiently ancient in origin and manufacture to be entitled to entry under paragraph 717. The Government contends that it is assessable, as found by the collector, as decorated china at 60 per cent ad valorem under paragraph 93, claiming the article should be considered as an entirety, and, under the principles laid down in the sofa case, G. A. 7203 (T. D. 31492), not separable for duty purposes; and that, consisting of dutiable and nondutiable portions, the articles themselves are dutiable.

While there are some features of this case which are distinguishable from the case above cited, we think in the main the case should be governed by the principles there laid down. The values of the constituent parts of the articles imported in this case are conceded by the importers to be as given in the invoice. Upon reference to the invoice we find that in many cases the decorations or metal parts exceed the value of the antique or porcelain portion by several hundred per cent, and in some cases the reverse is found to be true, the porcelain part exceeding by a large percentage the value of the metal. The total values of the two constituent parts, how-

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ever, show that the metal decorations are about 70 per cent of the value of the porcelain. This, it will be observed, is a very considerable part of the article itself, and can hardly be ignored in determining the dutiable status of the goods. This metal part seems to have been designed entirely for the articles with which it was imported, and from the records and testimony in the case we gather that it is useless for any other purpose than the decoration of the articles for which it was designed. On the other hand, the porcelain might be used separately; but the importers have seen fit to import them together. They were intended to be used together, and we are constrained to hold that the two taken together, in each instance, should be considered as an entirety. That being determined, we think the case should be governed by the sofa case, so called. We therefore hold these goods should be dutiable as decorated china, as assessed, and overrule the protest.

No. 26799.—Protests Overruled.—Protest 499767 of Redden & Martin (Newark), and protest 501536 of Lord Bros. & Co. (Portland, Me.). Opinions by Waite, G. A.

Protests overruled for want of merit.

No. 26800.—Protests Overruled.—Protest 519738 of Spencer Importing & Trading Co. (New York), protests 463561, etc., of Southern Bagging Co. (Norfolk), and protest 465684 of J. J. Buchey & Co., and protest 466679 of O. G. Hempstead & Son (Philadelphia). Opinions by Somerville, G. A.

Protests overruled for want of merit.

Before Board 1, October 5, 1911.

No. 26801.—Pocket Toilets.—Protest 453703 of American Thermo-Ware Co. (New York). Opinion by Sharretts, G. A.

The board sustained the importers' claim that pocket toilets were dutiable as manufactures of glass or paste under paragraph 109, tariff act of 1909, the collector expressing willingness to reliquidate accordingly in view of Abstract 22695 (T. D. 30356).

No. 26802.—Rosaries.—Protest 389477 of J. A. Jacques (Boston). Opinion by Sharretts, G. A.

Protest sustained as to rosaries on the authority of G. A. 7053 (T. D. 30731.)

No. 26803.—Articles of Personal Adornment—Articles of Utility—Smokers' Articles.—Protests 423270, etc., of J. W. Hampton, jr., & Co. et al., and protest 417344 of H. Wolff & Co. (New York), and protest 488265 of Kaufmann Bros. (Pittsburgh). Opinions by Sharretts, G. A.

Cigarette cases composed of metal and brass, respectively, and ladies' gun-metal mesh bags, classified as articles of personal adornment under paragraph 448, tariff act of 1909, were claimed to be dutiable as smokers' articles (par. 475) and manufactures of metal (par. 199). Protests sustained on the authority of G. A. 7129 (T. D. 31089).

No. 26804.—Wooden Boxes—Thermometers.—Protest 460523 of P. H. Petry Co. (New York). Opinion by Sharretts, G. A.

Empty wooden boxes inadvertently classified as articles of cut glass under paragraph 98, tariff act of 1909, were held dutiable as manufactures of wood (par. 215), as claimed by the importers. The board sustained a further claim that thermometers in chief value of paper were dutiable as manufactures of paper (par. 420) rather than as articles of cut glass (par. 98).

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No. 26805.—Protests Overruled.—Protests 474404, etc., and protests 512183, etc., of Hensel, Bruckmann & Lorbacher, and protests 33361f, etc., of H. Wolff & Co. et al. (New York), and protest 488254 of F. B. Vandegrift & Co. (Philadelphia). Opinions by Sharretts, G. A.

Protests overruled for want of merit.

No. 26806.—Willow Baskets.—Protests 504796-37687, etc., of American Shipping Co. (Chicago). Opinion by McClelland, G. A.

Protests sustained as to willow baskets on the authority of Brody *v.* United States (T. D. 31573).

No. 26807.—Soya-Bean Oil.—Protest 489693 of Swan & Finch Co. (New York).

McClelland, *General Appraiser:* The merchandise, the classification of which is involved in this protest, was invoiced as "unrefined Manchu oil crushed from soya beans," and was returned by the appraiser as poppy seed oil. The collector assessed duty at the rate of 15 cents per gallon under the provisions of paragraph 35 of the tariff act of 1909, and the protest claim is that it is exempt from duty under paragraph 639 of said act.

From the testimony in the case, especially that part of it which is of a scientific nature, it is difficult to determine whether the merchandise is poppy-seed oil or soya-bean oil, for from the figures given it is apparent that there is practically no difference between the specific gravity, iodine number, and saponification value of these two commodities, and commercial witnesses say the distinction between the two is determinable from smell, appearance, color, and the drying tests; but the only one of these tests which we think we are justified in accepting as being reliable is the drying test, and we accept it as a fact proved that soya-bean oil will not dry upon merely being exposed to the air. It is simply a question of whether the weight of evidence on behalf of protestants is such as to overcome the presumption of regularity which attaches to the collector's classification and the supporting testimony of the official chemist, and we find as a fact that it does. In any event, it is a well-settled rule that if there be doubt it must be resolved in favor of the importer, and we therefore hold that the merchandise is entitled to free entry. The protest is sustained and the decision of the collector reversed.

No. 26808.—Protests Overruled.—Protests 501247, etc., of Ernest L. Rhodes & Co. (Atlanta). Opinion by McClelland, G. A.

Protests overruled for want of merit.

No. 26809.—Articles of Personal Adornment—Smokers' Articles.—Protest 476353 of A. J. Dale (New York). Opinion by Chamberlain, G. A.

Cigarette cases composed of brass and gun metal, respectively, and classified as articles of personal adornment under paragraph 448, tariff act of 1909, were held dutiable as smokers' articles (par. 475), as claimed by the importer. G. A. 7102 (T. D. 30942) and Knauth *v.* United States (1 Ct. Cust. Appls., 334; T. D. 31432) followed.

No. 26810.—Lanolin—Medicinal Preparation.—Protests 417536, etc., of Lehn & Fink et al. (New York).

Lanolin, a product of wool grease, classified as a medicinal preparation under paragraph 65, tariff act of 1909, was claimed to be dutiable as refined wool grease (par. 290). Protests overruled.

Chamberlain, *General Appraiser:* * * * Lanolin has been the subject of decision both by the board and the courts, and it has always been held to be classifiable

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for duty purposes as a medicinal preparation. Movius *v.* United States (66 Fed. Rep., 734), G. A. 5881 (T. D. 25910), and Zinkeisen *v.* United States (167 Fed. Rep., 312; T. D. 29546). The record in the cases at bar does not, in our opinion, warrant us in reversing the former findings of the board and the courts.

We find the merchandise to be a medicinal preparation, not a refined wool grease, and hold it dutiable as assessed. * * *

No. 26811.—Kippered Herring.—Protest 480117 of M. A. Newmark & Co. (Los Angeles) and protest 385817 of L. E. Doudiet & Co. (Minneapolis). Opinions by Chamberlain, G. A.

Protests sustained as to kippered herring on the authority of United States *v.* Rosenstein (1 Ct. Cust. Appls., 304; T. D. 31357).

No. 26812.—Protests Overruled.—Protest 500325-37178 of P. V. Bright Brokerage Co. (Chicago). Opinion by Chamberlain, G. A.

Protest overruled for want of merit.

Before Board 2, October 5, 1911.

No. 26813.—Knitting Machines—Machine Tools.—Protests 476522, etc., of P. C. Kuyper & Co. (New York).

Fischer, *General Appraiser:* The articles we have here before us are knitting machines either intended for power or hand motion. These machines perform the ordinary operation of knitting in the manufacture of knitted articles and fabrics. Duty was assessed on the merchandise at the rate of 45 per cent ad valorem under the provisions of paragraph 199, tariff act of 1909, and it is claimed dutiable properly at 30 per cent ad valorem under paragraph 197 of said act as machine tools.

As commonly spoken of, we believe there is no doubt that these articles are machines rather than machine tools. A knitting machine involves the manipulation of yarns or threads whereby fabrics or articles are made, and differs from the machines used in weaving and braiding in that it constructs a looped fabric as distinguished from one that is braided or formed from warp and weft threads. If these knitting machines are to be regarded as falling within the common understanding of the term "machine tool," then it is evident to us that looms and other machines in which yarn or thread is woven or manipulated would have to be likewise considered. As we view the conclusion reached by the United States Court of Customs Appeals in the Myers case (T. D. 31260), these machines are not machine tools either within the meaning of the term as technically understood or within its broad meaning referred to in the said case as applicable to "tools," which, while they still remain tools within the definitions given by the lexicographers, partake of the character of machinery by reason of the power and principle applied. These machines are not such as are used in workshops for planing, drilling, sawing, etc., nor are they tools as distinguished from machines. We hereby affirm the collector's assessments. The protests are overruled.

No. 26814.—Parts of Printing Machines—Machine Tools.—Protest 484705 of Charles A. Johnson & Co. (New York). Opinion by Fischer, G. A.

Certain steel parts of printing machines, invoiced as "doctors," and described by the appraiser as pieces of steel from 42 to 46 inches long, 2½ to 3 inches wide, and ranging in thickness from 18 to 26 gauge, which were classified as manufactures of metal under paragraph 199, tariff act of 1909, were claimed to be dutiable as machine tools (par. 197). Protest overruled.

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No. 26815.—Machines for Sewing Knitted Goods—Sewing Machines.—Protests 478599, etc., of P. C. Kuyper & Co. (New York).

Fischer, *General Appraiser:* The articles here in question are machines that are used to sew parts of knit fabrics together. Duty was assessed thereon at the rate of 45 per cent ad valorem under the provisions of paragraph 199, tariff act of 1909, as manufactures of metal, not specially provided for, and the said machines are claimed dutiable properly at 30 per cent ad valorem under paragraph 197 of said act, as sewing machines.

The machines here in question perform the work of sewing knitted fabrics together by use of a sewing mechanism using an ordinary lock stitch. There are two styles of the machine referred to in the record. The one is a lock-stitch seaming machine, and the other a combined two-thread circular lock-stitch linking and point-seaming machine. The work performed is the sewing of fabrics together by the use of a needle and hook, forming a chain stitch.

In G. A. 7225 (T. D. 31623), the board held that the term "sewing machines" covered the various styles of machines used to make a stitch which fastened together fabrics or material for manufacturing purposes, and was not to be limited to machines such as were constructed only for family or domestic sewing purposes. We believe these machines here in question come fairly within that ruling, and we sustain the claim in the protests under paragraph 197, and modify the decisions of the collector accordingly.

No. 26816.—Protests Overruled.—Protests 208271, etc., of Kern, Loewi & Mendel et al. (New York). Opinion by Fischer, G. A.

Protests overruled for want of merit.

No. 26817.—Protests Overruled.—Protests 463253, etc., of Lefcourt & Schulhof et al. (New York). Opinion by Cooper, G. A.

Protests overruled for want of merit.

Before Board 3, October 5, 1911.

No. 26818.—Models of Inventions—Hydraulic Motor and Pump.—Protest 481831 of A. K. Baylor (New York).

Waite, *General Appraiser:* The goods in this case are described in the invoice as a hydraulic motor and one pump for motor car, with the necessary pipes, connections, and attachments. It was assessed for duty under paragraph 199, tariff act of 1909, which provides for manufactures of metal. It is claimed by the importer to be free of duty under paragraph 629, which reads as follows:

629. Models of inventions and of other improvements in the arts, to be used exclusively as models and incapable of any other use.

Some testimony was taken in this case on behalf of the importer, and we quote the following from the record of his testimony:

Q. What did that shipment consist of in its entirety?—A. Consisted of the pump at one end and the motor at the other end and connecting pipes for passing oil between the two.

Q. In other words, all the parts formed one complete model?—A. One complete demonstration; yes, sir.

Q. Is there anything in relation to the weight and size or any other factors of the model as imported which renders it unfit for actual use in a motor car to-day?—A. Yes; it is crude and heavy, and is not even applicable to a motor car; that is to say, you can not put it in a motor car. I take it you understand such matters. The first thing that takes place to justify a new apparatus is to find out the idea involved in the inventor's mind, to show the principles laid out. Having studied the possibili-

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ties of this thing, the next step is to produce something which will actually work, and it is almost always the case that the first produced apparatus is an experimental device to prove the principle.

Q. Is that adaptation or importation such device?—A. As it is here it is such, yes.

Q. *Will the resultant machine as developed be identical with that imported?* A. *Oh, not at all; will be entirely different.*

From the above we gather that this is not a model, neither is it to be used exclusively as a model. It is an arrangement of parts in the form of an engine and pump used for the purpose of demonstrating a principle which is to be afterwards applied and utilized through a different machine. We conclude it is not such an article as is covered by paragraph 629, and therefore overrule the protest.

(T. D. 31913.)

Bushel of apples.

Appeal directed from decision of the Board of United States General Appraisers of August 14, 1911, Abstract 26351 (T. D. 31832), involving the question as to what constitutes a "bushel" of apples.

TREASURY DEPARTMENT, *October 10, 1911.*

SIR: The department is in receipt of your letter of the 9th instant, inviting attention to the decision of the Board of United States General Appraisers of August 14, 1911, Abstract 26351 (T. D. 31832), involving the question as to what constitutes a "bushel" of apples for dutiable purposes.

In view of the importance of the issue, you are hereby requested to file, in the name of the Secretary of the Treasury, an application with the United States Court of Customs Appeals for a review of the said decision, in accordance with the provisions of subsection 29 of section 28 of the tariff act of August 5, 1909.

Respectfully, R. O. BAILEY,
(91693.) *Assistant Secretary.*

Hon. WM. L. WEMPLE,
Assistant Attorney General, New York.

(T. D. 31914.)

Drawback on wall coverings.

Drawback on wall coverings manufactured by the Pacific Mills, of Lawrence, Mass., with the use of imported burlap.

TREASURY DEPARTMENT, *October 13, 1911.*

SIR: Drawback is hereby allowed under section 25 of the tariff act of August 5, 1909, and the regulations promulgated thereunder (T. D. 31695 of June 16, 1911), on wall coverings manufactured by the Pacific Mills, of Lawrence, Mass., with the use of imported burlap.

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The quantity of imported burlap to be taken as the basis for the allowance of drawback may equal that claimed in the drawback entry, provided it shall not exceed the actual quantity of covering exported.

The manufacturers' sworn statement, dated September 29, 1911, is inclosed herewith for filing in your office.

Respectfully, JAMES F. CURTIS,
(58761.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Boston, Mass.*

(T. D. 31915.)

Statue composed of bronze and ivory.

Appeal directed from the decision of the Board of United States General Appraisers of September 11, 1911, Abstract 26550 (T. D. 31866), involving the classification of a statue composed of bronze and ivory.

TREASURY DEPARTMENT, *October 13, 1911.*

SIR: The department is in receipt of your letter of the 4th instant, inviting attention to the decision of the Board of United States General Appraisers of September 11, 1911, Abstract 26550 (T. D. 31866), wherein it is held that a statue composed of bronze and ivory, which was assessed with duty as a manufacture in chief value of metal at the rate of 45 per cent ad valorem under paragraph 199 of the tariff act, was properly dutiable as statuary under paragraph 470 of the said act at the rate of 15 per cent ad valorem.

As the issue is an important one, you are requested to file. in the name of the Secretary of the Treasury, an application with the United States Court of Customs Appeals for a review of the said decision, in accordance with subsection 29 of section 28 of the said tariff act.

Respectfully, JAMES F. CURTIS,
(91642.) *Assistant Secretary.*

Hon. WM. L. WEMPLE,
Assistant Attorney General, New York.

(T. D. 31916.)

Iron cylinders containing free goods.

Appeal directed from decision of the Board of United States General Appraisers of August 17, 1911, Abstract 26392 (T. D. 31832), involving the classification of iron cylinders or drums used as the containers of free goods.

TREASURY DEPARTMENT, *October 13, 1911.*

SIR: I have to acknowledge the receipt of your letter of the 5th instant relative to the decision of the Board of United States General

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Appraisers of August 17, 1911, Abstract 26392 (T. D. 31832), involving the classification of certain iron drums imported for the University of Kansas, and which were held by the board to be entitled to admission free of duty.

In view of the importance of the issue, you are hereby requested to file, in the name of the Secretary of the Treasury, an application with the United States Court of Customs Appeals for a review of the said decision, in accordance with the provisions of subsection 29 of section 28 of the tariff act of August 5, 1909.

Respectfully, JAMES F. CURTIS,
(91160.) *Assistant Secretary.*

Hon. WM. L. WEMPLE,
Assistant Attorney General, New York.

(T. D. 31917.)

Facsimiles of postage stamps.

Importation of facsimiles of postage stamps, foreign and domestic, printed on loose sheets prohibited.

TREASURY DEPARTMENT, *October 14, 1911.*

SIR: The department is in receipt of your letter of August 30, 1911, requesting to be advised whether certain four packages of facsimiles of postage stamps, both foreign and domestic, printed on sheets of paper apparently intended as parts of stamp albums, imported via parcels post by the United Stamp Co., are prohibited importation under sections 3 and 4 of the act of February 10, 1891 (26 Stat., 742), or whether they may be delivered upon payment of the duty, attention being invited to T. D. 16075 of May 28, 1895, wherein it was held that a certain stamp album containing illustrations of stamps could be admitted to entry, as the same is not a counterfeit within the meaning of the statutes.

In reply, I have to state that the department has heretofore held that where illustrations of stamps are imported in loose sheets, not bound together as finished albums, as in this instance, their importation is prohibited under sections 3 and 4, *supra*, as being an engraving or print of obligations or other securities of the United States and foreign Governments, reenacted in the Criminal Code, approved March 4, 1909 (35 Stats., 1088), as sections 150 and 161 thereof. Therefore, the packages in question should not be delivered to the addressee.

The department perceives no objection, however, to the packages being returned to the country of origin, if desired.

Respectfully, JAMES F. CURTIS,
(91038) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Chicago, Ill.*

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(T. D. 31918.)

Additional list of customs notaries.

[Omitted from this edition.]

(T. D. 31919.)

Lock washers—Nut locks.

Appeal directed from the decision of the Board of United States General Appraisers of September 16, 1911, G. A. 7272 (T. D. 31864), involving the classification of certain so-called "lock washers."

TREASURY DEPARTMENT, *October 16, 1911.*

SIR: The department is in receipt of your letter of the 30th ultimo, inviting attention to the decision of the Board of United States General Appraisers of September 16, 1911, G. A. 7272 (T. D. 31864), wherein it is held that certain so-called "lock washers," which were assessed with duty under paragraph 199 of the tariff act of 1909 as manufactures of metal, were properly dutiable as "washers" under paragraph 162 of the said act.

In view of the importance of the issue, you are hereby requested to file, in the name of the Secretary of the Treasury, an application with the United States Court of Customs Appeals for a review of the said decision, in accordance with the provisions of subsection 29 of section 28 of the said tariff act of 1909.

Respectfully, JAMES F. CURTIS,
(80923.) *Assistant Secretary.*

Hon. WM. L. WEMPLE,
Assistant Attorney General, New York.

(T. D. 31920.)

Examination of teas.

Method to be used to ascertain artificial coloring or facing matter in tea by chemical analysis.

TREASURY DEPARTMENT, *October 16, 1911.*

SIR: In the examination of teas imported into your district, with the view to ascertaining whether or not they contain artificial coloring or facing matter, it is ordered that the following-described method be used in making chemical analysis, viz:

From 50 to 100 grams of tea, preferably the latter amount, should be stirred thoroughly in about 200 cubic centimeters of warm distilled

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water, thus separating from the leaf any adhering particles of facing or coloring matter. This mixture should be then strained through a No. 20 sieve. The supernatant liquid should be poured off and the sediment washed with alcohol onto a filter. The washing process should continue until the alcohol passes off without color. The sediment should be tested as follows for the different colors:

A. *Test for Prussian blue.*—A portion of the sediment remaining on the filter should be warmed in a test tube with 10 per cent alkali, should be diluted sparingly, and filtered through a small filter paper. The filtrate should be acidified with acetic acid and a drop or two of hydrochloric acid cooled and filtered. A drop or two of ferric-chloride solution should be added to the filtrate, which should be allowed to stand. If the liquid becomes greenish blue and deposits a blue precipitate on standing, it signifies that the tea has been colored with Prussian blue.

B. *Test for ultramarine blue and indigo.*—A portion of the sediment should be warmed in a test tube with 10 per cent alkali, then diluted sparingly and filtered through a small filter paper. The residue left on the filter paper should be transferred to a small porcelain dish, and to it should be added concentrated sulphuric acid. If there is perceptible an odor of sulphureted hydrogen, or if lead acetate paper is blackened by being exposed to the fumes, it signifies that the tea has been colored with ultramarine blue.

If the solution gives a greenish color, turning blue on warming, it signifies that the tea has been colored with indigo.

C. A portion of the sediment should be ignited and examined as usual for soapstone, talc, etc.

By treating with hot 10 per cent hydrochloric acid, filtering, and drying the residue, the presence of talc or soapstone is indicated by the peculiar soft soapy feel of the residue. Ignite the original tea leaf to ash, wash with cold water, and test extract for calcium, indicating calcium carbonate; then wash the residue in cold water, extract with boiling water, and test the boiling-water extract for soluble sulphates, indicating gypsum.

The microscopical examination of the original tea leaves and the sediment collected from the centrifuge is useful as indicating the probable presence of extraneous matter adhering to the surface of the tea leaves, such as dark particles, etc., which should give the usual chemical reactions for coloring matter before being pronounced as such.

Respectfully, JAMES F. CURTIS,
(61680-3.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 31921.)

Briefing of vouchers abolished.

[Circular No. 61.]

TREASURY DEPARTMENT, *October 14, 1911.*

To heads of bureaus, and chiefs of divisions, Secretary's Office, Treasury Department:

Department Circulars No. 30 of April 28, 1908, and No. 14 of February 18, 1911 (T. D. 31312), are hereby amended so that the requirement abolishing the briefing of official communications will extend to and include vouchers.

JAMES F. CURTIS, *Acting Secretary.*

(T. D. 31922—G. A. 7286.)

Machinery belting of cotton.

1. CLASSIFICATION.

The orderly guide in determining the proper classification of imported merchandise is to ascertain (1) whether the article is distinctly and definitely named in the law; (2) whether it is distinctly and definitely described; (3) its chief use, and (4) what article named in the law it most resembles.

2. SAME.

Where it is evident that Congress intended the classification of an article to be determined by its use, any general description of it is not controlling.

3. SAME—BELTING FOR MACHINERY—COTTON ROPE.

Cotton rope 1 or 2 inches in diameter, made up in the form of belts for the transmission of power, is dutiable as "belting for machinery" under paragraph 330, tariff act of 1909, rather than as manufactures of cotton under paragraph 332 of said act.

United States General Appraisers, New York, October 16, 1911.

In the matter of protest 499766 of Pitt & Scott (Ltd.) against the assessment of duty by the collector of customs at the port of Boston.

Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers).

COOPER, *General Appraiser:* The importation covered by this protest is invoiced as "cotton belting" and "patent inter-stranded cotton driving rope," and duty was collected thereon by the collector at the port of Boston as a manufacture of cotton not specially provided for, at the rate of 45 per cent ad valorem under paragraph 332 of the tariff act of 1909. The importer claims that duty should have been collected at the rate of 30 per cent ad valorem under paragraph 330 of said act as "belting for machinery * * * of which cotton or other vegetable fiber is the component material of chief value."

The collector in transmitting the protest to the board made the following return:

I inclose herewith the special report of the appraiser, dated the 6th instant, who states that the merchandise subject of protest, invoiced as "Patent Inter-Stranded Cotton Driving Rope," and "cotton belting," is identical in construction and use to

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which it is put, the only difference being diameter, viz, 1 and 2 inch, respectively. It is used in place of a belt in transmitting power by machinery.

After careful inquiry among dealers in this class of merchandise, it was found that it is bought and sold and known commercially as cotton driving or transmission rope and that no technical book calls it "belting."

Attached to the return of the collector is a copy of a letter, dated April 5, 1910, from the Assistant Secretary of the Treasury directing the collector to classify the goods as a manufacture of cotton under paragraph 332.

It appears that the merchandise in question is patented; that it is manufactured in a peculiar way for a certain purpose; and that it is not manufactured for strength, but for flexibility and durability. There is much proof to the effect that the merchandise is commonly known as "transmission" or "driving rope." But as there is no commodity mentioned in the tariff law by that name or that would come under that description, we can not pursue this inquiry further.

There is some proof that "cotton belting" is a name given in commerce or trade to a certain commodity used for machinery belting. But this proof does not satisfy the requirements of the law that a commercial designation such as will control the meaning of a tariff law must be definite, uniform, and general, and not partial, local, or personal. Maddock *v.* Magone (152 U. S., 368); Sonn *v.* Magone (159 U. S., 417).

If the evidence was sufficient to establish a commercial designation with respect to the particular commodity referred to by the witnesses, it would not remove the article under consideration from the provision for belting for machinery and, therefore, further consideration of that phase of the case is unnecessary. All of the witnesses either assert or admit that the common and chief use of the article is that of belting for machinery; that it is used for the purpose of transmitting power from pulley to pulley, or from the power wheel to the driving wheel of a machine; and that it is made of cotton.

In the absence of a specific name for an article in the tariff law upon which duties are levied, or in the absence of such descriptive term as would with certainty identify the article for classification, other means must be resorted to for the purpose of determining its proper classification in order that the legal duties may be collected. The use to which an article is put is often the best and the surest means of determining its proper classification.

In ascertaining the dutiable character and proper classification of imported merchandise, specific designation will control general designation in the tariff law. Chew Hing Lung *v.* Wise (176 U. S., 156; T. D. 21954).

The importation under consideration is not "the material out of which belts are made," but is the article "belting [a belt] for machinery."

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In Koch *v.* Seeberger (30 Fed. Rep., 424) the court said:

I do not think that a name should be the sole guide by which to classify imported goods for duty.

In United States *v.* Nichols et al. (46 Fed. Rep., 359) the court said:

Nor does the use of an article necessarily control its classification.

In Sonn *v.* Magone (159 U. S., 417) the court said:

Ordinary use, not occasional or subsequent use, furnishes the guide for classification.

The orderly and proper inquiry and guide in determining the proper and lawful classification of imported merchandise is to ascertain: (1) Is the article or merchandise distinctly and definitely named in the tariff law? and if not so named, then (2) is it distinctly and definitely described? and if not, then (3) what is the ordinary and chief use to which the article or merchandise is put? and (4) to which article of merchandise mentioned in the tariff law is the article or merchandise similar?

It therefore appears that even the name of an article does not necessarily control its classification when there are circumstances to show more clearly the intent of Congress in levying duty upon an article. It is evident that Congress intended the classification of belting for machinery to be determined by its use, and for that reason the general description of the merchandise as "manufactures of cotton" is not controlling.

The conclusion reached in this decision is supported by the following authorities: United States *v.* Horrax (1 Ct. Cust. Appls., 142, T. D. 31187); Magone *v.* Wiederer (159 U. S., 555); and Meyer et al. *v.* Cadwalader (89 Fed. Rep., 963).

The protest is sustained.

(T. D. 31923.)

Abstracts of decisions of the Board of General Appraisers.

Board 1.—Sharretts, McClelland, and Chamberlain. *Board 2.*—Fischer, Howell, and Cooper. *Board 3.*—Waite, Somerville, and Hay.

BEFORE BOARD 1, OCTOBER 9, 1911.

No. 26819.—BUFF LEATHER.—Protest 442763 of Bartley Bros. & Hall (New York). Opinion by McClelland, G. A.

White buff hides, which were inadvertently classified as dressed and finished skins under paragraph 451, tariff act of 1909, were held dutiable as buff leather (par. 450). Protest sustained.

No. 26820.—WALRUS LEATHER—ROUGH LEATHER.—Protests 502314, etc., of Greene, Tweed & Co. et al. (New York). Opinion by McClelland, G. A.

Protests sustained as to walrus leather on the authority of Abstract 23769 (T. D. 30828).

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No. 26821.—Leather Shoes.—Protest 444540 of Ovington Bros. & Co. (New York). Opinion by McClelland, G. A.

Shoes of bovine leather, inadvertently classified as manufactures of leather under paragraph 452, tariff act of 1909, were held dutiable as shoes of leather (par. 450), as claimed by the importers.

No. 26822.—Enamel Colors.—Protests 214086, etc., of F. B. Vandegrift & Co. et al. (New York). Opinion by McClelland, G. A.

Protests sustained as to enamel colors containing lead. United States *v.* Marsching (1 Ct. Cust. Appls., 216; T. D. 31257) followed.

No. 26823.—Protests Overruled.—Protest 482825 of American Glue Co., protests 410175, etc., of Roberts, Cushman & Co. et al., and protests 506620, etc., of F. B. Vandegrift & Co. et al. (New York), and protests 403066, etc., of J. F. Wittman et al. (Philadelphia). Opinions by McClelland, G. A.

Protests overruled for want of merit.

Before Board 2, October 9, 1911.

No. 26824.—Protests Overruled.—Protests 493080, etc., of B. Altman & Co. et al., and protests 504965, etc., of Cornelius Kahlen et al. (New York). Opinions by Fischer, G. A.

Protests overruled for want of merit.

No. 26825.—Protests Overruled.—Protests 452572-35089 of John V. Farwell Co. (Chicago). Opinion by Cooper, G. A.

Protests overruled for want of merit.

Before Board 1, October 11, 1911.

No. 26826.—Baseballs—Toys.—Protest 504343 of A. A. Vantine & Co. (New York).

McClelland, *General Appraiser:* The merchandise under consideration was returned by the appraiser as manufactures of leather and assessed for duty by the collector at the rate of 40 per cent ad valorem under the provisions of paragraph 452 of the tariff act of 1909. It is claimed by protestants that duty should have been assessed on the merchandise at the rate of 35 per cent ad valorem under paragraph 431 of said act as toys.

The invoice description is "base ball," and in the testimony the witnesses agree that the balls are sold under that name, but it is contended that they are handled by toy dealers and are used only as toys, the balls being so poorly made and of such poor composition that they would not stand batting. The balls, while a little smaller than the regulation baseball, are nevertheless similarly made and are capable of use for catching by either boys or men. The mere fact that they are sold by toy dealers means nothing, since it is a well known fact, and so stated in evidence, that toy dealers sell the regulation baseball.

We overrule the protest and affirm the action of the collector.

No. 26827.—Protests Overruled.—Protest 474535 of K. Kaufmann & Co. (Newark), and protests 499417, etc., of O. G. Hempstead & Son (Philadelphia). Opinions by McClelland, G. A.

Protests overruled for want of merit.

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No. 26828.—Precious Stones—Coral.—Protest 180301 of Joseph Frankel's Sons (New York). Opinion by Chamberlain, G. A.

Pieces of drilled coral classified as "beads" under paragraph 408, tariff act of 1897, were claimed to be dutiable as precious stones cut but not set (par. 435). Protest sustained on the authority of G. A. 6584 (T. D. 28131).

No. 26829.—Kippered Herring.—Protest 444230 of Wadhams & Co. (Portland, Oreg.). Opinion by Chamberlain, G. A.

Protest sustained as to kippered herring on the authority of United States *v.* Rosenstein (1 Ct. Cust. Appls., 304; T. D. 31357).

No. 26830.—Protest Overruled.—Protest 416627 of C. H. Wyman & Co. (St. Louis). Opinion by Chamberlain, G. A.

Protest overruled for want of merit.

Before Board 2, October 11, 1911.

No. 26831.—Sewing Machine Heads.—Protest 502674 of Stone & Downer Co. (Boston), and protests 486624, etc., of A. H. Post & Co. (Philadelphia). Opinions by Fischer, G. A.

Sewing machine heads classified as manufactures of metal under paragraph 199, tariff act of 1909, were claimed to be dutiable as sewing machines (par. 197). Protests sustained. Abstract 26613 (T. D. 31866) followed.

No. 26832.—Protests Dismissed.—Protests 474326, etc., of Peter Balzerini (New York). Opinion by Fischer, G. A.

Protests dismissed on stipulation between the protestant and the collector of customs.

No. 26833.—Protests Overruled.—Protests 505012, etc., and 505051, etc., of Knauth, Nachod & Kuhne et al. (New York). Opinions by Fischer, G. A.

Protests overruled for want of merit.

No. 26834.—Silk Fabrics.—Protest 436765 of Johnson & Faulkner (New York). Opinion by Howell, G. A.

Silk fabrics classified as weighing less than 8 ounces per square yard under paragraph 387, tariff act of 1897, were found to weigh more than 8 ounces per square yard and held dutiable as manufactures of silk (par. 391). Protest sustained.

No. 26835.—Fast-Edge Silk Ribbons.—Protest 456100-35211 of Gage Bros. & Co. (Chicago).

Howell, *General Appraiser:* In this case the appraiser reports that the merchandise in question consists of silk ribbon without fast edges. It was returned by the appraiser as "silk trimmings" and was assessed for duty by the collector at the rate of 60 per cent ad valorem under paragraph 402, tariff act of 1909. The importers contend that the ribbon has fast edges, and as such is properly dutiable under the specific provision therefor in paragraph 401 of said act at the rate of 50 per cent ad valorem. Claim is made in the alternative that the merchandise is dutiable as a manufacture of silk at the same rate under paragraph 403 of said act.

The only testimony in the case is that of the examiner at Chicago, the port of entry, who passed the merchandise in question. We do not consider, however, that the testimony of that officer requires any discussion, for it is merely to the effect

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that because one or more of the threads may be removed lengthwise from the cord forming the edge of the ribbon he considers that the edges of the ribbon are not fast edges.

The official sample before us measures about 7 inches in width, with a silk-covered cotton cord attached in scallop effect to the edge of the ribbon by means of the weft threads. The article with the cord attached is clearly a ribbon with fast edges, and even with the cord removed the ribbon appears to have fast edges.

We hold that the merchandise is properly dutiable at the rate of 50 per cent ad valorem under the provisions of paragraph 401 of said act.

The protest is sustained to this extent, and the entry will be reliquidated accordingly.

No. 26836.—PROTESTS OVERRULED.—Protests 505340, etc., of George Borgfeldt & Co. (Baltimore), protests 411719, etc., of Haas Bros. (New York), and protest 511697 of Morimura Bros. (Port Townsend). Opinions by Howell, G. A.

Protests overruled for want of merit.

No. 26837.—DRAWNWORK.—Protests 168899, etc., of M. H. Frank & Co. (New York). Opinion by Cooper, G. A.

Protests sustained as to drawnwork articles on the authority of Abstract 23312 (T. D. 30635) and G. A. 6993 (T. D. 30442).

BEFORE BOARD 3, OCTOBER 11, 1911.

No. 26838.—ADDITIONAL DUTY—GLOVES.—Protest 497514 of J. H. McNulty (Plattsburg). Opinion by Hay, G. A.

The board sustained the importer's contention that leather gloves dutiable at specific rates under paragraph 455, tariff act of 1909, are not subject to the additional duty provided in subsection 7 of section 28 of said act for undervaluation. Pings v. United States (72 Fed. Rep., 260) followed.

BEFORE BOARD 1, OCTOBER 13, 1911.

No. 26839.—CHIP BASKETS.—Protest 443821 of Morimura Bros. (New York). Opinion by McClelland, G. A.

Chip baskets, classified as manufactures of wood under paragraph 208, tariff act of 1897, were held dutiable as manufactures of chip (par. 449), as claimed by the importers.

No. 26840.—PROTESTS OVERRULED.—Protests 458767-35502, etc., of Charles D. Stone & Co. (Chicago), protests 416065, etc., of Knauth, Nachod & Kuhne et al., protests 410945, etc., of Lasker & Bernstein et al. (New York), protests 471178, etc., of F. B. Vandegrift & Co. (Philadelphia), and protest 474569 of Wilfred Schade & Co. (St. Louis). Opinions by McClelland, G. A.

Protests overruled for want of merit.

BEFORE BOARD 2, OCTOBER 13, 1911.

No. 26841.—CYLINDRICAL METAL CONTAINERS.—Protests 427649, etc., of Smith, Kline & French Co. et al. (Philadelphia). Opinion by Fischer, G. A.

Thin sheet-metal coverings in the form of drums, serving as the inside lining of wooden over-casks and containing cod liver oil, which were classified as cylindrical metal vessels under paragraph 151, tariff act of 1909, were held free of duty as the usual containers of free merchandise. Protests sustained on the authority of Abstract 26485 (T. D. 31851).

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No. 26842.—PROTESTS OVERRULED.—Protests 422482, etc., of Farbenfabriken of Elberfeld Co. et al. (Boston), protests 411243, etc., of Schoellkopf, Hartford & Hanna Co. (Buffalo), protests 402976, etc., of Harshaw, Fuller & Goodwin Co. (Cleveland), protests 511368, etc., of Lunham & Moore (New York), and protests 507156, etc., of George Borgfeldt & Co. (San Francisco). Opinions by Fischer, G. A.

Protests overruled for want of merit.

No. 26843.—PROTESTS OVERRULED.—Protests 404626, etc., of S. Blechman et al., protest 436507 of Arthur Geoffroy, and protests 462753, etc., of Isler & Guye et al. (New York). Opinions by Howell, G. A.

Protests overruled for want of merit.

No. 26844.—SCALLOPED ARTICLES—DRAWNWORK ARTICLES.—Protests 356361, etc., of Dwyer & Murphy et al. (New York). Opinion by Cooper, G. A.

Protests sustained as to scalloped and drawnwork articles on the authority of G. A. 6966 (T. D. 30271) and G. A. 6993 (T. D. 30442).

BEFORE BOARD 3, OCTOBER 13, 1911.

No. 26845.—DRIED PEASE.—Protest 488657 of W. White (Port Huron). Opinion by Waite, G. A.

An importation of pease classified as seed pease under paragraph 262, tariff act of 1909, was held dutiable as dried pease under the same paragraph. Protest sustained.

No. 26846.—ARTISTIC ANTIQUITIES—DAMASK—JEWEL COFFRET.—Protests 521556, etc., of William Baumgarten & Co. (New York). Opinion by Waite, G. A.

A renaissance jewel coffret, several pieces of damask, brocade table covers and portières were held free of duty as artistic antiquities under paragraph 717, tariff act of 1909, as claimed by the importers.

No. 26847.—STATUE BY AN AMERICAN ARTIST.—Protest 499011 of Tiffany & Co. (New York). Opinion by Waite, G. A.

The board sustained the importers' claim that a bronze statue was free of duty under paragraph 716, tariff act of 1909, as the production of an American artist residing temporarily abroad, the collector having expressed willingness to reliquidate accordingly.

Decisions on Applications for Rehearings.

No. 26848.—REHEARING DENIED.—Application by the Government for rehearing on protest 419328 (New York) of Didier-March Co., decided August 16, 1911, Abstract 26371 (T. D. 31832). No. 353. Before Board 3, September 19, 1911.

Application denied.

No. 26849.—REHEARING DENIED.—Application by the Government for rehearing on protest 451393 (New York) of Pisani Bros., decided August 14, 1911, Abstract 26349 (T. D. 31832). No. 356. Before Board 3, September 19, 1911.

Application denied.

No. 26850.—REHEARING DENIED.—Application by the protestants for rehearing on protest 466384 (New York) of R. F. Downing & Co., decided August 17, 1911, Abstract 26393 (T. D. 31832). No. 357. Before Board 3, September 19, 1911.

Application denied.

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No. 26851.—Rehearing Granted—Coverings.—Application by the protestants for rehearing on protests 422275, etc. (New York), of B. Altman & Co. et al., decided August 12, 1911, Abstract 26335 (T. D. 31813). No. 335. Before Board 3, September 22, 1911.

Application granted. Certain coverings are claimed to be the usual containers of liquids or semiliquids, or of merchandise free of duty or subject to specific duty, and that they are therefore nondutiable. A further claim is made that certain cylindrical vessels classified as such under paragraph 151, tariff act of 1909, are dutiable at the rates applicable to their contents.

No. 26852.—Rehearing Granted—Coal-Tar Preparation.—Application by the protestant for rehearing on protest 463590 (Galveston), of I. F. Orton, decided August 14, 1911, Abstract 26341 (T. D. 31832). No. 354. Before Board 1, September 28, 1911.

Application granted. Merchandise classified as a coal-tar preparation under paragraph 15, tariff act of 1909, is claimed to be free of duty as creosote oil (par. 536).

No. 26853.—Rehearing Denied.—Application by the protestants for rehearing on protest 259569-24782 (Chicago), of C. D. Stone & Co., decided September 8, 1911, Abstract 26508 (T. D. 31851). No. 362. Before Board 1, September 28, 1911.

Application denied.

No. 26854.—Rehearing Denied.—Application by the Government for rehearing on protests 179290, etc. (Boston), of Danker & Marston, decided August 7, 1911, G. A. 7255 (T. D. 31798). No. 337. Before Board 3, October 3, 1911.

Application denied.

No. 26855.—Rehearing Granted—Coverings.—Application by the protestants for rehearing on protests 432047, etc. (New York), of William Baumgarten & Co. et al., decided August 12, 1911, Abstract 26335 (T. D. 31813). No. 343. Before Board 3, October 3, 1911.

Application granted. Certain coverings are claimed to be the usual containers of liquids or semiliquids or of merchandise free of duty or subject to specific duty and that they are therefore nondutiable. A further claim is made that certain cylindrical vessels classified as such under paragraph 151, tariff act of 1909, are dutiable at the rates applicable to their contents.

No. 26856.—Rehearing Denied.—Application by the protestants for rehearing on protest 471181 (Philadelphia) of F. B. Vandegrift & Co., decided August 14, 1911, Abstract 26361 (T. D. 31832). No. 349. Before Board 3, October 10, 1911.

Application denied.

No. 26857.—Rehearing Denied.—Application by the protestants for rehearing on protests 476738, etc. (New York), of Hammel, Riglander & Co., decided August 24, 1911, Abstract 26421 (T. D. 31842). No. 363. Before Board 3, October 10, 1911.

Application denied.

No. 26858.—Rehearing Denied.—Application by the protestants for rehearing on protest 488126 (New York) of King Collar Button Co., decided August 29, 1911, Abstract 26448 (T. D. 31845). No. 365. Before Board 3, October 10, 1911.

Application denied.

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TREASURY DEPARTMENT, *October 17, 1911.*

The appended court decisions are published for the information of collectors of customs and others concerned.

JAMES F. CURTIS, *Assistant Secretary.*

(T. D. 31924.)

Forfeiture.

UNITED STATES *v.* ONE STRADIVARIUS VIOLIN.[1]

U. S. District Court, Southern District of New York. May 8, 1911.

FORFEITURE—CONCEALMENT OF FRAUDULENT IMPORTATION.

A violin purchased abroad to be delivered in this country free of duty and other expenses, which subsequently was delivered to the purchaser without the payment of duty (which fact was not discovered by the customs officers until four years after such importation), and which was habitually kept by him in his drawing-room, played on at a public concert and at Sunday afternoon entertainments at the owner's residence, at which times it was frequently examined by musicians as an object of interest; *Held* not to have been concealed within the meaning of section 22, act of June 22, 1874 (18 Stat. L., 190), providing that in cases of actions for forfeiture of fraudulently imported merchandise any period of "concealment . * * * of the property shall not be reckoned within" the three-year interval subsequent to importation during which suit must be instituted, even though the importer knew or had reason to believe that the importation was fraudulent.

ON demurrer to information for forfeiture. Sustained.

Henry A. Wise, United States attorney, and *Addison S. Pratt* and *Carl E. Whitney*, assistant United States attorneys, for the United States.

Parsons, Closson & McIlvaine (*H. B. Closson* of counsel) for claimants.

HOLT, *District Judge:* This is an information filed to obtain the forfeiture of a violin on the ground that it was imported into this country without payment of the duty. The violin was made by the great violin maker, Antonio Stradivari, early in the eighteenth century. It was at one time owned by Kiesewetter, a celebrated player, and is known as the Kiesewetter Stradivarius. It was purchased in January, 1906, by Mr. Henry O. Havemeyer from George Hart, of Hart & Son, violin dealers in London, for £1,550, to be delivered in New York or Boston, free of all expense whatever. The collector, having received information about July, 1910, that the violin had been brought into this country without payment of duty, seized the violin as forfeited upon that ground in August, 1910. The substantial question in this case is whether the suit is barred by the statute of limitations. It is conceded by the counsel in the case that section 22 of the act of June 22, 1874 (18 Stat. L., 190), is the statute which applies. That statute is as follows:

That no suit or action to recover any pecuniary penalty or forfeiture to property accruing under the customs revenue laws of the United States shall be instituted unless such suit or action shall be commenced within three years after the time when such penalty or forfeiture shall have accrued: *Provided*, That the time of the absence from the United States of the person subject to such penalty or forfeiture, or of any concealment or absence of the property, shall not be reckoned within this period of limitation.

This action was not commenced within three years of the time the penalty of forfeiture accrued, and the sole question, therefore, in this case is whether there was any concealment or absence of the property within the meaning of the act which

[1] Reported in 188 Fed Rep., 542.

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would prevent the application of the statute. The Government claims that there is evidence tending to show that Mr. Havemeyer knew or had reason to believe that the violin was imported without the payment of duty. I think the evidence is insufficient to establish such claim; but the question is immaterial, because, if the defense of the statute of limitations is valid, it is immaterial whether he knew or suspected that the duty had not been paid.

The evidence shows that the violin in question is one of unusual celebrity; that after Mr. Havemeyer purchased it he kept it habitually in his drawing-room; that he was accustomed to give musical parties at his residence on Sunday afternoons, at which large numbers of persons were usually present; that on such occasions the violin was frequently examined and was generally an object of interest to musicians as a famous specimen of a great violin maker's art. It was on one occasion played on at a public concert, and it was habitually played on by different artists at Mr. Havemeyer's Sunday afternoon musical parties. Not only is there no evidence of any concealment or absence of the property, but the evidence shows that it was always kept in Mr. Havemeyer's drawing-room, and was shown to and known by musicians and all people interested in music to an unusual extent.

Counsel for the Government argues that as the collector did not know that it had been imported without the payment of duty until the summer of 1910 it was concealed during that period within the meaning of the statute. But it seems to me that this suggestion is entirely untenable. This violin was never absent; it was always present at the owner's house. It was never concealed. A concealment of property implies some active intention on the part of somebody to secrete it. If the Government's contention in this case is sound, any purchaser of property which had been imported having no knowledge or ground for suspicion that there had been any violation of the customs laws in its importation would be liable to have the property seized 20 or 30 years after its purchase. I think that the statute of limitations is a complete bar to this suit and I direct a verdict for the claimants, dismissing the information on the merits.

(T. D. 31925.)

Refunds.

JOANNIDIS *v.* LOEB.

U. S. Circuit Court, Southern District of New York. September, 1911.

REFUNDS TO IMPORTERS UNDER DECISIONS BY BOARD OF GENERAL APPRAISERS AND CIRCUIT COURT.

The refunding of moneys in compliance with decisions of the Board of General Appraisers and the Circuit Court is, under section 24, customs administrative act of 1890, a function of the Treasury Department, and there is, therefore, no foundation for a suit against the collector of customs to restrain him from disposing of such moneys.

IN equity. Bill for injunction.

On demurrer to complainant's bill for an injunction restraining the defendant as collector of the port of New York from disposing of certain moneys claimed by the complainant. Sustained.

These proceedings arise over the disposition of refunds in compliance with a decision of the Board of General Appraisers, affirmed by the Circuit Court, Southern District of New York. The complainant was the owner of certain ripe olives consigned to Stamatis D. Stamatopoulos, who also acted as consignee for other importers. Stamatopoulos entered the olives, paid the duty, and protested; and the litigation before the Board of General Appraisers and the Circuit Court was conducted

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in his name. Stamatopoulos is largely indebted to the United States on account of duties withheld on merchandise (other than olives) fraudulently imported. Complainant now prays for an injunction restraining the collector of customs from paying this money to said Stamatopoulos, and from applying it against the latter's indebtedness to the United States, pending the termination of a suit by the complainant herein against said Stamatopoulos over the ownership of said money.

The defendant contended that as by reason of section 24 of the customs administrative act of 1890, as amended by the tariff act of 1897, the collector has no power or duty in the payment or settlement of claims against the United States, he was improperly made a party to this litigation. Said section reads:

SEC. 24. That whenever it shall be shown to the satisfaction of the Secretary of the Treasury that, in any case of * * * payments made upon appeal, more money has been paid to or deposited with a collector of customs than, as has been ascertained by final liquidation thereof, the law required to be paid or deposited, the Secretary of the Treasury shall direct the Treasurer to refund and pay the same out of any money in the Treasury not otherwise appropriated. * * *

Almuth C. Vandiver (*J. Joseph Lilly*, of counsel), for the complainant.

Henry A. Wise, United States attorney (*William L. Wemple*, Assistant United States attorney, of counsel), for the collector.

LACOMBE, *Circuit Judge:* The relief prayed is for an injunction restraining the defendant as collector of the port of New York from paying out (either directly or by crediting the same against a debt due to the United States from one Stamatopoulos) the amount of certain duties improperly exacted from merchandise, the property of complainant imported into this country. The various entries have been reliquidated.

It is not understood, nor does the brief refer to any provisions of law, that the collector of the port is the person who under such circumstances makes payment of the moneys to be refunded. That is a function of the Treasury Department. Since that officer has nothing to do with the refund—subsequent to reliquidation—there is no foundation for suit to restrain him from acting.

Demurrer sustained and bill dismissed with costs.

(T. D. 31926.)

Drawback on cotton gins and linting machines.

Drawback on cotton gins and linting machines manufactured by the Brown Cotton Gin Co., of New London, Conn., with the use of imported bristles.

TREASURY DEPARTMENT, *October 17, 1911.*

SIR: Drawback is hereby allowed under section 25 of the tariff act of August 5, 1909, and the regulations promulgated thereunder (T. D. 31695 of June 16, 1911), on cotton gins and linting machines manufactured by the Brown Cotton Gin Co., of New London, Conn., with the use of imported bristles.

The allowance shall not exceed the quantities, inclusive of waste, set forth in the manufacturers' sworn statement, dated September 28, 1911, transmitted herewith for filing in your office.

Respectfully, JAMES F. CURTIS,
(90777.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Boston, Mass.*

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(T. D. 31927.)

Drawback on belt webbing.

Drawback on belt webbing manufactured by the Mills Woven Cartridge Belt Co., of Worcester, Mass., from imported cotton yarn.

TREASURY DEPARTMENT, *October 17, 1911.*

SIR: Drawback is hereby allowed under section 25 of the tariff act of August 5, 1909, and the regulations promulgated thereunder (T. D. 31695 of June 16, 1911), on belt webbing, manufactured by the Mills Woven Cartridge Belt Co., of Worcester, Mass., from imported cotton yarn.

The allowance may equal the quantity used, provided it shall not exceed the net weight of the exported webbing, with an addition of 2.25 per cent of such weight to compensate for loss in manufacture.

The manufacturers' sworn statement, dated October 5, 1911, is inclosed herewith for filing in your office.

Respectfully, JAMES F. CURTIS,
(73839.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Boston, Mass.*

(T. D. 31928.)

Qualifying power of Federal Union Surety Co. permanently suspended.

[Circular No. 62.]

TREASURY DEPARTMENT, *October 17, 1911.*

To bond-approving officers of the United States and others concerned:

The temporary suspension of the qualifying power of the Federal Union Surety Co. of Indianapolis, Ind., made on August 11, 1911, by Department Circular No. 50, and which action was taken pending a complete examination of the affairs of this company by the Treasury Department, will be made permanent on and after this date, as the result of such examination.

No bonds in which the United States may be interested, either directly or indirectly, executed on and after this date by the said company as surety should be accepted by bond-approving officers of the United States.

All officers of the United States having knowledge of any existing claim, or of the occurrence of any event, or the existence of any circumstances which may hereafter result in a claim against the Federal Union Surety Co., are hereby directed to communicate the facts, in detail, to the Secretary of the Treasury (Section of Surety Bonds), within 30 days after this notice, giving the name of the principal, the date and amount of the bond, the nature of the claim, the circumstances out of which it arose, and the status of the claim at the time of such report.

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Bond-approving officers are notified that in the opinion of the Secretary of the Treasury the guaranty of the Federal Union Surety Co. does not afford the United States sufficient protection on official, contract, internal revenue, customs, court, and all other bonds executed by that company and now in force and in which the Government may have a direct or indirect interest.

It will be necessary, therefore, to require new bonds in all such cases where the Federal Union Surety Co. has qualified as sole surety or severally as cosurety.

JAMES F. CURTIS, *Acting Secretary.*

(T. D. 31929.)

Drawback on toilet and medicinal preparations—Alcohol produced by rectifying or redistilling.

Drawback is not allowed under section 25 of the tariff act of August 5, 1909, on toilet and medicinal preparations manufactured from alcohol produced by rectifying or redistilling.

TREASURY DEPARTMENT, *October 17, 1911.*

SIR: Referring to your letter of July 17 last, respecting the furnishing of an extract from a certificate of manufacture covering certain rectified alcohol manufactured from domestic tax-paid alcohol and subsequently used in the production of toilet and medicinal preparations, I have to advise you that the department has held that under section 25 of the tariff act of August 5, 1909, drawback is allowable only on such preparations as were manufactured from alcohol withdrawn and tax-paid as such. Drawback would therefore not be allowable under this section on preparations manufactured from alcohol which was produced by rectifying or redistilling. Therefore, as in the case under consideration drawback would not be allowable under this construction of the law, the question of data to be shown in the extract from the manufacturing certificate need not be considered.

Respectfully, JAMES F. CURTIS,
(89954.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Detroit, Mich.*

(T. D. 31930.)

Drawback on braids.

Drawback on braids manufactured by William Salmon, of Brooklyn, N. Y., from imported artificial silk.

TREASURY DEPARTMENT, *October 19, 1911.*

SIR: Drawback is hereby allowed under section 25 of the tariff act of August 5, 1909, and the regulations promulgated thereunder (T. D.

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31695 of June 16, 1911), upon braids manufactured by William Salmon, of Brooklyn, N. Y., from imported artificial silk.

A manufacturing record shall be kept showing in detail the quantity of braid manufactured of each style, the quantity of imported artificial silk used in the manufacture thereof, and the wastage, if any. A sworn abstract from this record shall be filed with each entry.

The allowance may equal the quantity of imported artificial silk used, provided it shall not exceed that shown in the sworn abstract.

The manufacturer's sworn statement, dated September 9, 1911, is transmitted herewith for filing in your office.

Respectfully, JAMES F. CURTIS,
(65456.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 31931.)

Drawback on spring wire and springs for shade rollers.

Drawback on spring wire and springs for shade rollers, manufactured by Stewart, Hartshorn Co., of Harrison, N. J., with the use of imported steel rods.

TREASURY DEPARTMENT, *October 19, 1911.*

SIR: Drawback is hereby allowed under section 25 of the tariff act of August 5, 1909, and the regulations promulgated thereunder (T. D. 31695 of June 16, 1911), on spring wire and springs for shade rollers manufactured by Stewart, Hartshorn Co., of Harrison, N. J., with the use of imported steel rods.

The quantity of imported material to be taken as the basis for the allowance of drawback shall not exceed the weight of the spring wire or springs exported, with an addition of 5 per cent of such weight to compensate for worthless waste.

The manufacturers' sworn statement, dated September 21, 1911, is inclosed herewith for filing in your office.

Respectfully, JAMES F. CURTIS,
(29573.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 31932.)

Drawback on cooking utensils.

Drawback on cooking utensils manufactured by the National Aluminum Works, of Wellsville, N. Y., with the use of imported aluminum sheets.

TREASURY DEPARTMENT, *October 19, 1911.*

SIR: Drawback is hereby allowed under section 25 of the tariff act of August 5, 1909, and the regulations promulgated thereunder (T. D. 31695, of June 16, 1911), on cooking utensils manufactured by the National Aluminum Works, Wellsville, N. Y., with the use of imported aluminum sheets.

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The drawback entry should show the size and weight of the aluminum sheets used, the net weight of the article produced therefrom, the quantity of waste, and the value of the waste and imported material.

The allowance shall not exceed the quantity of aluminum appearing in the exported article, with an addition for waste depending upon the value thereof.

The manufacturers' sworn statement, dated August 23, 1911, together with schedule and catalogues are inclosed herewith for filing in your office.

Respectfully, JAMES F. CURTIS,
(90411.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *Buffalo, N. Y.*

(T. D. 31933.)

Drawback on shoes.

Drawback on shoes of various kinds manufactured by A. E. Little & Co., of Lynn, Mass., with the use of imported gray striped cloth, black, white, and tanned corkscrew cloth, and other kinds of imported cloth.—T. D. 30133 and T. D. 30828 revoked.

TREASURY DEPARTMENT, *October 19, 1911.*

SIR: Drawback is hereby allowed under section 25 of the tariff act of August 5, 1909, and the regulations promulgated thereunder (T. D. 31695 of June 16, 1911), on shoes of various kinds manufactured by A. E. Little & Co., of Lynn, Mass., with the use of imported gray striped cloth, black, white, and tanned corkscrew cloth, and other kinds of imported cloth.

A manufacturing record shall be kept showing the number of pairs of shoes of each kind and style manufactured for export, the kinds and quantities of imported cloth used in the manufacture thereof, stating the number of lineal yards used, the weight thereof, the width of each lineal yard, the quantity of imported cloth actually appearing in each pair of shoes exported stated in square yards and fractions thereof, the weight of the imported cloth in each pair of shoes, the quantity of wastage, the value thereof, and the value of the imported cloth used. A sworn abstract from this record shall be filed with each drawback entry.

The allowance shall not exceed the quantity of cloth actually appearing in the shoes, with an addition for worthless waste not to be in excess of 37.53 per cent of such quantity.

The manufacturers' sworn statement, dated September 19, 1911, is inclosed herewith for filing in your office.

T. D. 30133 and T. D. 30828 are hereby revoked.

Respectfully, JAMES F. CURTIS,
(3746.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *Boston, Mass.*

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(T. D. 31934.)

Foreign, diplomatic, and consular officers—Baggage.

TREASURY DEPARTMENT, *October 19, 1911.*

To collectors of customs and others concerned:

Article 635 of the Customs Regulations of 1908 is hereby amended to read as follows:

ART. 635. *Baggage.*—The privilege of free entry and exemption from examination is extended to the baggage and effects of the following officers, their families, and suites:

Foreign ambassadors, ministers, and chargés d'affaires, and also to those secretaries, and naval, military, and other attachés at embassies and legations, high commissioners and consular officers accredited to this Government, whose Governments grant reciprocal privileges of free entry to American officers of like grade accredited thereto; also to similar representatives of this Government abroad, including consular officers returning from their missions, and to such high officials of this and foreign Governments as shall be the subject of special instructions from this department.

Authorizations for free entry and the extension of courtesies under this and the preceding article will be granted by this department only upon the request of the Secretary of State in each instance, and application therefor should be made to the Department of State.

JAMES F. CURTIS, *Assistant Secretary.*

(T. D. 31935.)

Testing molasses.

T. D. 31762 relative to testing molasses extended so as to apply to molasses received from countries other than Antigua as well as to molasses received from Antigua, and article 979 of the Customs Regulations of 1908 further modified accordingly.

TREASURY DEPARTMENT, *October 20, 1911.*

SIR: The department is in receipt of a letter from the United States appraiser at New York, dated July 31, 1911, in which it is suggested that the provisions of T. D. 31762 relative to the testing of molasses from the British colony of Antigua should apply to all importations of molasses, on the ground that molasses is received from other countries, relative to which the same conditions as to test prevail.

In view of this condition, the provisions of T. D. 31762 are hereby extended so as to apply to molasses received from countries other than Antigua as well as to molasses received from Antigua. Article 979 of the Customs Regulations of 1908 is hereby further modified accordingly.

Respectfully,

JAMES F. CURTIS,
Assistant Secretary.

(67934.)

COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 31936.)

Customs regulations amended.

Articles 1522, 1523, and 1524 of the Customs Regulations of 1908, relative to the comparison of classifications and appraisements made at various ports, amended.

TREASURY DEPARTMENT, *October 21, 1911.*

To collectors and other officers of the customs:

The work heretofore done by the Board of United States General Appraisers in connection with the comparison of the classifications and appraisements of imported merchandise at the various ports, under the provisions of articles 1522, 1523, and 1524 of the Customs Regulations of 1908, will hereafter be performed by the appraiser's office at the port of New York. Said articles 1522, 1523, and 1524 of the Customs Regulations of 1908 are therefore hereby amended to take effect November 1, 1911, so as to read as follows:

ART. 1522.—*Forwarding sample labels and samples to the United States appraiser at New York.*—The appraiser, or, if there be no appraiser, the collector or surveyor at each port of entry or delivery, will forward by mail to the appraiser at New York at the close of each day, week, or month, as hereinafter provided, a sample label on Form No. 6431, covering each article of merchandise passed during that day, week, or month, as the case may be, except articles in the following list:

Ores; coal; sugar and molasses; salt; lumber, including clapboards and shingles; cattle, swine, horses, mules, and sheep; grains which are subject to a specific duty; hay and straw; butter, cheese, milk, cream and eggs; vegetables in their natural state; fruits in their natural state; bacon and hams and fresh meats; poultry; woodpulp; hides of cattle; coffee; ice; raw furs; tea; articles covered by paragraphs 492, 493, 500, 516, 520, 648, 652, and 709.

Samples of the merchandise should accompany the sample label whenever practicable. However, after so reporting the first importation samples and sample labels need not be forwarded oftener than once in three months for subsequent importations identical in quality, material, and entered and appraised values.

In districts where there are subports each subport shall report on such forms to the appraiser or collector at the port of entry for that district, who will promptly examine, correct, and forward the same to the appraiser at New York.

The object of furnishing such samples and sample labels is to provide a check against undervaluations and erroneous classifications, and to avoid discrepancies in the appraisement and classification of identical merchandise at the various ports.

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The present supply of form Catalogue No. 6431 will be used until it is exhausted, but officers forwarding the same will enter in the column therein provided for remarks:

(1) A statement of the quality, grade, manufacturer's mark, number, and the brand of the merchandise, and any other facts necessary to identify the merchandise.

(2) The number of pounds, yards, dozens, etc., on the invoice.

(3) The name of the manufacturer, where the same differs from the name of the person invoicing the merchandise and is known or can be ascertained.

Where no transactions in relation to the appraisement or classification of merchandise subsequent to the previous report by sample label have occurred, except as to such identical importations, a type of which has already been so reported, the collector and other principal officer of the customs will report on Catalogue No. 6439, as heretofore, except that this form will be addressed to the United States appraiser at New York instead of the Board of General Appraisers.

ART. 1523.—*Ports classified for daily, weekly, and monthly reports.*—The following ports will forward such samples or labels daily: Albany, Baltimore, Bangor, Boston, Bridgeport, Buffalo, Burlington (Vt.), Chicago, Cincinnati, Cleveland, Corpus Christi, Dayton, Denver, Detroit, Eagle Pass, El Paso, Galveston, Grand Rapids, Great Falls, Hartford, Honolulu, Indianapolis, Kansas City, Key West, Los Angeles, Louisville, Marquette, Milwaukee, Mobile, Newark, New Bedford, New Haven, New Orleans, Newport (Vt.), Newport News, Niagara Falls, Nogales, Ogdensburg, Oswego, Pembina, Perth Amboy, Philadelphia, Pittsburgh, Plattsburg, Port Huron, Portland (Me.), Portland (Oreg.), Port Townsend, Providence, Rochester, San Diego, San Francisco, San Juan, Springfield, St. Louis, St. Paul, Tampa, Toledo, Washington.

The following ports will forward such samples and sample labels or reports weekly: Atlanta, Cape Vincent, Charleston, Columbus, Brownsville, Des Moines, Duluth, Eastport (Me.), Gloucester, Houston, Jacksonville, Houlton, Juneau, Lincoln, Memphis, Newport (R. I.), Norfolk, Omaha, Peoria, Petersburg, Richmond, Savannah, St. Joseph, Sandusky, Syracuse, Wilmington (Del.)

All other ports will forward such samples or sample labels or reports monthly.

ART. 1524.—*Action by the appraiser at New York on the samples and sample labels.*—Such samples and sample labels will be carefully compared by the appraising officers at New York with those covering

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identical or similar merchandise received from other ports and also with the classification and appraisement of identical or similar merchandise passed at that port. Any discrepancy found in the classification or appraisement of identical or similar merchandise will be made the subject of correspondence between the United States appraiser at New York and the customs officers reporting the same, and if an agreement can not readily be reached by correspondence as to the correct appraisement or classification, the matter will be submitted to the department for a decision.

The United States appraiser at New York will report to the department each month all discrepancies in the appraisement and classification noted by him, and the action taken thereon, for such further action as the department may deem necessary.

JAMES F. CURTIS, *Acting Secretary.*

(T. D. 31937.)

Chlorine with synthetic indigo.

Appeal directed from board's decision August 14, 1911, Abstract 26344 (T. D. 31832), involving the classification of merchandise reported by the appraiser to consist of a combination of chlorine with synthetic indigo.

TREASURY DEPARTMENT, *October 21, 1911.*

SIR: The department is in receipt of your letter of the 17th instant relative to the decision of the Board of United States General Appraisers of August 14, 1911, Abstract 26344 (T. D. 31832), involving the classification of merchandise reported by the appraiser to consist of a combination of chlorine with synthetic indigo, on which duty was assessed at the rate of 30 per cent ad valorem under paragraph 15 of the tariff act of August 5, 1909, as a coal-tar color, and which was held by the board to be properly dutiable under paragraph 25 of the said act at three-fourths of 1 cent per pound as indigo paste.

In view of the importance of the issue, you are hereby requested to file, in the name of the Secretary of the Treasury, an application with the United States Court of Customs Appeals for a review of the said decision, in accordance with the provisions of subsection 29 of section 28 of the tariff act.

Respectfully,
(91797.)

JAMES F. CURTIS,
Assistant Secretary.

Hon. WM. L. WEMPLE,
Assistant Attorney General, New York.

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(T. D. 31938.)

Labels for hand baggage.

Gummed labels for hand baggage of passengers crossing border not to be pasted across opening.

TREASURY DEPARTMENT, *October 23, 1911.*

SIR: In view of the numerous complaints and protests against the attaching of the gummed labels provided for in T. D. 31582 of May 12, 1911, over the opening of hand baggage, the said decision is hereby amended and modified so as to require that the label shall be pasted on the baggage at a suitable place other than over the opening, and the legend on the label is hereby changed to read as follows:

This label should be pasted on hand baggage only. It does not insure passage of the baggage without examination at the place of return into the United States if the customs officers deem examination necessary.

Respectfully,
(79100.)
COLLECTOR OF CUSTOMS, *Detroit, Mich.*

JAMES F. CURTIS,
Assistant Secretary.

(T. D. 31939—G. A. 7287.)

Mesh bags and parts of, composed wholly of silver.

Mesh bags and parts thereof, composed wholly of silver, are dutiable as "finished or unfinished bags, * * * or parts thereof, made *in chief value* of metal mesh composed of silver," under paragraph 448, tariff act of 1909, the words "in chief value of" applying to the mesh and not to the completed article.

United States General Appraisers, New York, October 18, 1911.

In the matter of protest 407103, of Hensel, Bruckmann & Lorbacher against the assessment of duty by the collector of customs at the port of New York.

Before Board 1 (SHARRETTS, MCCLELLAND, and CHAMBERLAIN, General Appraisers).

SHARRETTS, *General Appraiser:* The appraiser reports that the merchandise in question consists of hand bags, finished and unfinished, made in chief value of metal mesh composed of sterling silver, and valued at over $2 per dozen pieces. The importer produced a sample which consists of silver mesh suitable for use in the manufacture of a mesh bag. Duty was assessed on the merchandise at rates equivalent to 85 per cent ad valorem under the provisions in paragraph 448, act of 1909, for—

Finished or unfinished bags, purses and other articles, or parts thereof, made in chief value of metal mesh composed of silver, * * * valued at two dollars per dozen pieces * * *.

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The claim principally relied upon by the importer is that the merchandise is dutiable under paragraph 199 as—

Articles or wares not specially provided for in this section, composed wholly or in part of * * * silver, * * * and whether partly or wholly manufactured, forty-five per centum ad valorem.

Counsel for the importer, in his brief, claims that the merchandise is not covered by paragraph 448, because it is composed *entirely* of silver; that the provisions for mesh bags and parts thereof in that paragraph include only such bags or parts as are in chief value of silver, etc.; and that the intent of Congress is plainly indicated as including in that part of the paragraph in question only such bags, purses, and other articles or parts thereof which are made of metal mesh composed of two or more materials of which silver represents the component of chief value. It is quite apparent that counsel for the importers misapprehended the scope of the provisions of paragraph 448 with regard to the merchandise in question. The words "made in chief value of metal mesh" apply to "bags, purses, and other articles," while the words "composed of silver," etc., apply to the mesh and not to the completed articles. Mesh bags and purses are made by attaching the mesh to a solid frame, and to bring these articles within the terms of the paragraph the mesh must be of more value than the other parts of the articles. A mesh bag or purse composed of a gold frame or a silver frame set with precious stones, or any frame of more value than the mesh, would not fall for duty under paragraph 448; but were such not the case the importer's contention could not be upheld.

A case involving the same principle of law now contended for on behalf of the importers was decided adversely to the importers by this board *In re* Cauvigny Brush Co., in G. A. 7022 (T. D. 30634), which decision was affirmed by the United States Court of Customs Appeals (1 Ct. Cust. Appls., 118; T. D. 31118). In that case the merchandise consisted of articles composed wholly of celluloid, and the importers claimed that as paragraph 17 provides only for articles of which collodion, pyroxylin, or celluloid, etc., is the component of chief value, the merchandise, which consisted wholly of celluloid, was not dutiable thereunder. In the decision of that case we said:

We are not greatly impressed with this argument. Articles composed wholly of collodion are composed in chief value of that substance within the common understanding and in accordance with the well-known principle that the greater includes the less; and if it can not be shown with reasonable certainty that Congress intended the phrase "articles composed in chief value of collodion" should have a restricted meaning different from the common understanding of the import of the words, we must conclude that the articles here in dispute are included in that provision.

Following the ruling in the above-cited decision, we hold that the silver mesh bags and parts thereof in the case at bar are made in chief value of metal mesh composed of silver, and, upon the authority of G. A. 7129 (T. D. 31089), we overrule the protest, the collector's decision being affirmed.

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(T. D. 31940.)

Abstracts of decisions of the Board of General Appraisers.

Board 1.—Sharretts, McClelland, and Chamberlain. *Board 2.*—Fischer, Howell, and Cooper. *Board 3.*—Waite, Somerville, and Hay.

BEFORE BOARD 1, OCTOBER 16, 1911.

No. 26859.—WATCH BRACELETS.—Protest 494782 of Breck & Feagans (Los Angeles). Opinion by Sharretts, G. A.

The protest related to watch bracelets composed of gold and classified as jewelry under paragraph 448, tariff act of 1909. The board sustained the importers' claim that the watch movements are dutiable as such under paragraph 192 of said act. The other portions of the bracelets were held dutiable as classified. G. A. 6015 (T. D. 26285) followed.

No. 26860.—PROTESTS OVERRULED.—Protests 280579–25812, etc., of Theo. Ascher Co. (Chicago), protest 391322 of Albert Lorsch & Co., protests 150380, etc., of Saks & Co. et al., protest 465385 of Siegman & Weil, and protests 25660h, etc., of Veit, Son & Co. et al. (New York), and protests 177056, etc., of C. H. Wyman & Co. (St. Louis). Opinions by Sharretts, G. A.

Protests overruled for want of merit.

BEFORE BOARD 1, OCTOBER 17, 1911.

No. 26861.—PROTESTS OVERRULED.—Protests 230824, etc., of George Murphy et al. and protests 424089, etc., of Snow's United States Sample Express Co. et al. (New York). Opinions by Sharretts, G. A.

Protests overruled for want of merit.

No. 26862.—FUR SKINS, DRESSED—BEAVER STRIPS—FUR CROSSES.—Protests 404309, etc., of T. W. Franklin et al. (New York). Opinion by McClelland, G. A.

Protests sustained as to furs dressed on the skin and beaver strips, and overruled as to fur crosses. G. A. 7063 (T. D. 30765), G. A. 7109 (T. D. 30990) and G. A. 7125 (T. D. 31085) followed.

BEFORE BOARD 2, OCTOBER 17, 1911.

No. 26863.—PROTESTS OVERRULED.—Protests 504924, etc., of Davies, Turner & Co. et al., protests 444349, etc., of Stern Brothers et al., and protests 410236, etc., of Adolph Strauss & Co. et al. (New York). Opinions by Fischer, G. A.

Protests overruled for want of merit.

No. 26864.—PROTESTS ABANDONED.—Protests 327707, etc., of Leon Rheims Co. et al. (New York). Opinion by Howell, G. A.

Protests abandoned.

BEFORE BOARD 1, OCTOBER 18, 1911.

No. 26865.—TOY MAGIC-LANTERN SLIDES.—Protest 347857 of B. Illfelder & Co. (New York). Opinion by Sharretts, G. A.

Toy magic-lantern slides classified as glass slides for magic lanterns under paragraph 110, tariff act of 1897, were held dutiable as toys (par. 418), as claimed by the importers. United States *v.* Borgfeldt (1 Ct. Cust. Appls., 370; T. D. 31455) followed.

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No. 26866.—Precious Stones, Cut.—Protest 394922 of R. A. Breidenbach, and protests 391792, etc., of Albert Lorsch & Co. (New York). Opinions by Sharretts, G. A.

Protests sustained as to pieces of onyx, agate, and other precious stones cut but not set, on the authority of T. D. 29832.

No. 26867.—Metal Rivets—Jewelry.—Protests 10576h, etc., of Naday & Fleischer (New York). Opinion by Sharretts, G. A.

Fancy metal rivets classified as jewelry under paragraph 434, tariff act of 1897, were claimed to be dutiable as manufactures of metal (par. 193). Protests sustained.

No. 26868.—Cut-Paste Articles.—Protest 227049 of Baum, Linz & Cohen (New York). Opinion by Sharretts, G. A.

Protest sustained as to cut-paste articles on the authority of G. A. 6995 (T. D. 30444).

No. 26869.—Metal Blocks.—Protest 432174 of Knauth, Nachod & Kuhne (New York). Opinion by Sharretts, G. A.

Metal blocks which were inadvertently classified as articles of personal adornment under paragraph 448, tariff act of 1909, were held dutiable as manufactures of metal (par. 199), as claimed by the importers.

No. 26870.—Rosaries.—Protest 403816 of D. O'Halloran (St. Paul). Opinion by Sharretts, G. A.

Protest sustained as to rosaries. G. A. 7053 (T. D. 30731) followed.

No. 26871.—Mosaic Jewelry—Articles of Personal Adornment.—Protests 423697, etc., of R. H. Macy & Co. (New York).

Sharretts, *General Appraiser:* Protest 423699 relates to so-called jewelry, consisting of (1) scarfpins, charms, cuff buttons, brooches, safety pins, necklaces, and hatpins, and (2) hat pins with fancy heads composed of glass or porcelain not imitating precious stones.

Duty was assessed on all of the articles at a rate equivalent to 85 per cent ad valorem under paragraph 448 of the act of 1909, and the claim relied upon by the importer is that said articles are dutiable at 45 per cent ad valorem under paragraph 109 or 199 of said act.

All of the merchandise is intended for personal adornment, and if composed in chief value of brass, or if set with imitation precious stones, the collector's classification relative thereto was correct and must be upheld.

The only witness called on behalf of the protestants submitted samples illustrative of the mosaic goods, but when asked how the goods imported differed, if at all, from the illustrative exhibit, replied:

Well, they are set more or less in mosaics, some more than others.

The sample scarfpin submitted in evidence consisted of a brass stem and an elaborate brass head made in the form of a horseshoe, in which was set an imitation turquoise inlaid with colored flowers made of enamel. Considering the work applied to the brass necessary to form the scarfpin, we are convinced that brass is the component material of chief value thereof. Of course the relative value of brass and paste or glass in mosaic jewelry depends upon the percentage of their respective materials used in the manufacture thereof, the amount of work applied to the brass to form the particular articles being considered. The board, after years of experience in passing upon mosaic jewelry, feels competent to determine from an exam-

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ination of the exhibits the relative value of the metal and glass in such articles when the value of one of those materials is much greater than that of the other. When, however, as in the present case, only illustrative exhibits have been offered, and they not accurately representing the importations with respect to the percentage of brass and glass or paste, we must hold that the protestants have failed to establish their case.

Small mosaics made into forms suitable for use in the manufacture of jewelry almost invariably imitate some precious stone inlaid with floral or other designs, and for years they have been included among the class of goods known commercially as imitation precious stones and have been so classified for duty. In accordance with the views herein expressed, we overrule the protest, so far as it relates to the mosaic jewelry.

Regarding the hatpins invoiced as "3 gross glass beads hatpin stems, pear, ball and olive," we find they are composed in chief value of paste, other than imitation precious stones, and sustain the claim in the protest that they are dutiable at 45 per cent ad valorem under paragraph 109 of the act of 1909, the collector's decision being modified accordingly.

No evidence having been submitted on behalf of the importers relative to protests 423697-8, we overrule the same, the decision of the collector in each case relative thereto being affirmed.

No. 26872.—Articles of Personal Adornment—Articles of Utility—Smoker's Articles.—Protest 437109 of American Express Co., protest 438327 of J. W. Hampton, jr., & Co., protests 478202, etc., of Knauth, Nachod & Kuhne, and protests 425428, etc., of R. H. Macy & Co. (New York). Opinions by Sharretts, G. A.

Protests sustained as to articles of utility. G. A. 7102 (T. D. 30942) and G. A. 7129 (T. D. 31089) followed.

No. 26873.—Protests Overruled.—Protest 375213 of John M. Maris & Co. (Philadelphia). Opinion by Sharretts, G. A.

Protest overruled for want of merit.

No. 26874.—Toy Magic-Lantern Slides.—Protests 451439, etc., of Robert B. Ways (Baltimore). Opinion by Chamberlain, G. A.

Toy magic-lantern slides, classified as glass slides for magic lanterns under paragraph 107, tariff act of 1909, were held dutiable as toys (par. 431), as claimed by the importers. United States *v.* Borgfeldt (1 Ct. Cust. Appls., 370; T. D. 31455) followed.

No. 26875.—Kippered Herring.—Protests 505164, etc., of Meyer & Lange (New York), and protest 441275 of Wadhams & Kerr Brothers (Portland, Oreg.). Opinions by Chamberlain, G. A.

Protests sustained as to kippered herring on the authority of United States *v.* Rosenstein (1 Ct. Cust. Appls., 304; T. D. 31357).

No. 26876.—Cement.—Protests 457275, etc., of Potmend Co. et al. (New York). Opinion by Chamberlain, G. A.

An article used for mending crockery, glassware, etc., and described on the invoice as "kittpulver," which was classified as a chemical mixture under paragraph 3, tariff act of 1909, was claimed to be dutiable as cement (par. 86). Protests sustained on the authority of Abstract 25974 (T. D. 31727).

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No. 26877.—Imitation Jet—Gun-Metal Mesh Bags.—Protests 444451, etc., of Emrich, King & Schorsch (New York). Opinion by Chamberlain, G. A.

Protests sustained as to imitation jet articles and gun-metal mesh bags. United States *v.* Beierle (1 Ct. Cust. Appls., 457; T. D. 31506) and G. A. 7129 (T. D. 31089) followed.

No. 26878.—Dog Grass—Crude Drug.—Protests 484769, etc., of McKesson & Robbins, et al. (New York). Opinion by Chamberlain, G. A.

Dog grass, classified as a drug, advanced in value or condition under paragraph 20, tariff act of 1909, was claimed to be free of duty as a drug in a crude state (par. 559). Protests sustained on the authority of Abstract 26269 (T. D. 31813).

No. 26879.—Protests Overruled.—Protests 477300, etc., of American Express Co. et al., protests 436736, etc., of Dingelstedt & Co. et al., protests 428473, etc., of Fensterer & Ruhe, protests 497141, etc., of Gabriel & Schall, protests 504998, etc., of A. Klipstein & Co., protests 262133, etc., of F. H. Lovell & Co. et al., protests 406320, etc., of Montgomery & Co. et al., protests 505192, etc., of National Aniline & Chemical Co. et al., protest 505322 of Smith & Butler, and protest 511477 of Stern Bros. (New York), protest 401062 of Gabriel & Schall, protests 486631, etc., of Powers-Weightman-Rosengarten Co. et al., and protest 516642 of F. B. Vandegrift & Co. (Philadelphia), protests 509066, etc., of K. Hiradi Co. et al., and protest 511650 of Oriental Trading Co. (Port Townsend), protest 497990 of American Express Co. (St. Louis), and protests 438100, etc., of Braun-Knecht-Heimann Co. et al. (San Francisco). Opinions by Chamberlain, G. A.

Protests overruled for want of merit.

Before Board 2, October 18, 1911.

No. 26880.—Protests Overruled.—Protests 453076, etc., of Proctor & Gamble Co. (Cincinnati). Opinion by Fischer, G. A.

Protests overruled for want of merit.

No. 26881.—Scalloped Articles.—Protest 422418 of Schofield & Walter (New York). Opinion by Cooper, G. A.

Protest sustained as to scalloped articles on the authority of G. A. 6966 (T. D. 30271).

No. 26882.—Cotton Articles—Hat Foundations—Mercerized Cotton Cloth.—Protests 467724, etc., and 463406, etc., of A. & H. Veith et al. (New York). Opinions by Cooper, G. A.

Imitation plush cut into meter lengths to be used as hat foundations or coverings was held dutiable as cotton cloth. Protest 467725 sustained. Abstract 23987 (T. D. 30944) followed. The board sustained a further claim in the other protests that certain cotton cloth was not subject to the additional duty provided in paragraph 323, tariff act of 1909, for mercerization.

No. 26883.—Protests Overruled.—Protests 507988–37542, etc., of Mandel Brothers et al. (Chicago). Opinion by Cooper, G. A.

Protests overruled for want of merit.

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BEFORE BOARD 3, OCTOBER 18, 1911.

No. 26884.—PROTESTS OVERRULED.—Protest 381272 of B. J. Spiropoulos (New York). Opinion by Waite, G. A.

Protests overuled for want of merit.

No. 26885.—COVERINGS OF SPECIFIC-DUTY AND FREE GOODS.—Protest 416960–32384 of M. L. Barrett & Co. (Chicago), protests 457834, etc., of A. T. Lewis & Son Dry Goods Co. (Denver), and protests 416825, etc., of Park & Tilford et al. (New York). Opinions by Hay, G. A.

Paper, cardboard and pasteboard wrappers or containers of merchandise subject to specific duty or free of duty were held nondutiable, as claimed by the importers. United States *v.* Matagrin (1 Ct. Cust. Appls., 309; T. D. 31406) followed.

No. 26886.—CLERICAL ERROR.—Protest 511940 of Syndicate Trading Co. (New York). Opinion by Hay, G. A.

The board sustained the importers' claim for relief on the ground of clerical error.

No. 26887.—PROTESTS OVERRULED.—Protests 505373, etc., of Charles B. Perkins & Co. et al., and protests 509947, etc., of S. S. Pierce Co. (Boston), and protests 510007, etc., of C. A. Clark et al. (New York). Opinions by Hay, G. A.

Protests overruled for want of merit.

BEFORE BOARD 1, OCTOBER 19, 1911.

No. 26888.—IMITATION JET—CUT PASTE ARTICLES.—Protests 394092–30602, etc., of Charles D. Stone & Co. (Chicago), and protest 432458 of R. H. Macy & Co. (New York). Opinions by Sharretts, G. A.

Protests sustained as to imitation jet articles and cut-paste articles. United States *v.* Beierle (1 Ct. Cust. Appls., 457; T. D. 31506) and G. A. 6995 (T. D. 30444) followed.

No. 26889.—GLASS TUBING.—Protest 373005 of J. W Hampton, jr., & Co. (Philadelphia). Opinion by Sharretts, G. A.

Protest sustained as to glass tubing on the authority of United States *v.* Heil (178 Fed. Rep., 537; T. D. 30492).

No. 26890.—GLASS BEADS.—Protest 496877 of F. Euler & Co. (New York). Opinion by Sharretts, G. A.

Beads composed of paste glass and pierced through both sides, designed to be sewn on wearing apparel, which were classified as manufactures of paste or glass under paragraph 109, tariff act of 1909, were held dutiable as beads (par. 421), as claimed by the importers. G. A. 5607 (T. D. 25088) followed.

No. 26891.—TOY JEWELRY.—Protests 467506, etc., of A. J. Hague & Co. et al., and protest 423835 of Strauss Bros. & Co. (New York), and protests 373002, etc., of Charles Hott et al. (Pittsburgh). Opinions by Sharretts, G. A.

Protests sustained as to toy jewelry on the authority of G. A. 7251 (T. D. 31786), G. A. 6868 (T. D. 29558), and G. A. 6658 (T. D. 28391).

No. 26892.—JEWELRY.—Protests 222156, etc., of Baum, Linz & Cohen (New York). Opinion by Sharretts, G. A.

Elastic belts in chief value of metal, belt buckles composed either of base metal or mother-of-pearl, horn combs, and flimsily constructed necklaces, imported under

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the tariff act of 1897 and classified as jewelry, were held dutiable according to the component material of chief value or as toys. Blumenthal v. United States (T. D. 27397, suit 4108) followed.

No. 26893.—Silica Ware.—Protests 424720, etc., of R. F. Downing & Co. (New York). Opinion by Sharretts, G. A.

Pyrometer tubes and other articles composed of silica, classified as earthenware under paragraph 94, tariff act of 1909, were held dutiable as articles of earthy or mineral substances (par. 95). Protest 424720 sustained.

No. 26894.—Lace Pins.—Protests 502869, etc., of E. Horrax et al. (New York), Opinion by Sharretts, G. A.

Lace pins with steel shafts, gold plated, and heads of glass or paste, or of brass, gold plated, classified as jewelry under paragraph 448, tariff act of 1909, were held dutiable as manufactures of metal (par. 199). Protests sustained on the authority of G. A. 6139 (T. D. 26679).

No. 26895.—Articles of Personal Adornment—Articles of Utility.—Protests 415980, etc., of B. Altman & Co., protest 468353 of George Borgfeldt & Co., and protests 440439, etc., of Hensel, Bruckmann & Lorbacher et al. (New York). Opinions by Sharretts, G. A.

Protests sustained as to cigarette cases, cigar lighters, gun-metal mesh bags, coin boxes, and other articles of utility. G. A. 7102 (T. D. 30942), G. A. 7129 (T. D. 31089), and G. A. 7103 (T. D. 30943) followed.

No. 26896.—Protests Overruled.—Protest 497444–37426 of Butler Bros. (Chicago), protests 471569, etc., of B. Altman & Co., and protest 438053 of Albert Lorsch & Co. (New York), protests 400629, etc., of Butler Bros. (St. Louis), and protest 267220 of Owl Drug Co. (San Francisco). Opinions by Sharretts, G. A.

Protests overruled for want of merit.

No. 26897.—Fur Skins, Dressed.—Protests 459264–34970, etc., of Charles Glanz Co. et al. (Chicago), protest 452204 of W. E. Allum, protest 496926 of A. Jacobson & Bros., and protests 449350, etc., of Max Thorn et al. (New York), and protests 404225 and 430705 of Gordon & Ferguson (St. Paul). Opinions by McClelland, G. A.

Protests sustained as to furs dressed on the skin. G. A. 7063 (T. D. 30765) followed.

No. 26898.—Leather Shoes.—Protest 480439 of C. B. Richard & Co. (New York). Opinion by McClelland, G. A.

Slippers reported by the appraiser to have been composed of sheepskin leather, which were classified as shoes of leather under paragraph 451, tariff act of 1909, were held dutiable as shoes of leather of the bovine species (par. 450), as claimed by the importers.

No. 26899.—Willow Baskets.—Protest 504063 of American Import Co. (Los Angeles), protest 504915 of H. B. Claflin Co., and protests 511558, etc., of A. A. Vantine & Co. et al. (New York), and protests 495223, etc., of American Import Co. et al., and protests 472768, etc., of Swayne, Hoyt & Co. et al. (San Francisco). Opinions by McClelland, G. A.

Protests sustained as to willow baskets on the authority of Brody v. United States (T. D. 31573).

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No. 26900.—Cedar Logs—Telephone Poles.—Protests 495577, etc., of C. A. Hull (Burlington). Opinion by McClelland, G. A.

Cedar trees felled, trimmed, and cut to the right length for telegraph or telephone poles, but not peeled or scored for cross arms, which were classified as telephone poles under paragraph 204, tariff act of 1909, were held free of duty as logs (par. 712). Protests sustained on the authority of G. A. 5715 (T. D. 25407).

No. 26901.—Wood Veneer.—Protest 475211 of Nozaki Bros. (San Francisco). Opinion by McClelland, G. A.

Protest sustained as to wood veneer. Abstract 26109 (T. D. 31757) followed.

No. 26902.—Willow Baskets—Shida Baskets—Bamboo Baskets.—Protests 493679–35963, etc., of G. W. Sheldon & Co. (Chicago), and protest 509835 of A. A. Vantine & Co. (New York).

Willow baskets and shida baskets, classified as manufactures of willow under paragraph 212, tariff act of 1909, were held dutiable as baskets of wood (par. 214), as claimed by the importers. Brody *v.* United States (T. D. 31573) and Abstract 19175 (T. D. 29099) followed. The board sustained a further claim that baskets of split bamboo, classified as baskets of wood (par. 214), are dutiable as manufactures of chip (par. 463).

McClelland, *General Appraiser:* * * * The United States Court of Customs Appeals considered and determined the classification of split bamboo baskets in the case of Tuska *v.* United States (1 Ct. Cust. Appls., 535; T. D. 31547), holding them to be dutiable as manufactures of chip under paragraph 449, tariff act of 1897. Judge Smith, writing for the court, said:

As bamboo is admittedly a wood, we must hold that the baskets so made are manufactures of chip and therefore dutiable under the provisions of paragraph 449.

It follows, therefore, that the bamboo baskets in question are dutiable at the rate of 35 per cent ad valorem under paragraph 463 of the act of 1909.

No. 26903.—Protests Overruled.—Protests 517745, etc., of Jordan-Marsh Co. et al. (Boston), protests 486094–35903, etc., of Theodore Ascher Co. et al., and protests 394629–30894, etc., of The Fair et al. (Chicago), protests 505018, etc., of Knauth, Nachod & Kuhne et al., protest 414961 of F. L. Kraemer & Co., protests 505140, etc., of H. Mautner & Bros. et al., protests 505183, etc., and 505785, etc., of Morimura Bros., protests 506561, etc., of Reiss & Brady et al., protest 421019 of L. F. Robertson & Sons, protest 388544 of A. L. Simon & Co., and protests 464705, etc., of A. A. Vantine & Co. (New York), protests 471213, etc., of J. F. Wittman et al. (Philadelphia), protests 507151, etc., of Morimura Bros. (Port Townsend), protest 495140 of C. H. Wyman & Co. (St. Louis), and protest 493715 of George Borgfeldt & Co., and protests 472745, etc., of Robert Dollar Co. (San Francisco). Opinions by McClelland, G. A.

Protests overruled for want of merit.

No. 26904.—Glass Tubing.—Protests 275994, etc., of Charles Walter & Son (New York). Opinion by Chamberlain, G. A.

Glass tubing for use in siphon bottles, not susceptible of being attached to bottles until it has been cut to appropriate sizes, classified as blown glassware under paragraph 100, tariff act of 1897, was held dutiable as manufactures of glass (par. 112). Protests sustained. G. A. 6533 (T. D. 27884) followed.

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No. 26905.—Gun-Metal Mesh Bags and Purses.—Protest 418246 of Emrich, King & Schorsch (New York). Opinion by Chamberlain, G. A.

Protest sustained as to mesh bags and purses composed of gun metal. G. A. 7129 (T. D. 31089) followed.

No. 26906.—Shell Cameos.—Protests 441012, etc., of Albert Lorsch & Co. (New York). Opinion by Chamberlain, G. A.

Shell cameos prepared and designed for use as settings for jewelry, classified as manufactures of shell under paragraph 464, tariff act of 1909, were held dutiable as precious stones (par. 449). G. A. 6936 (T. D. 30068) followed.

No. 26907.—Imitation Jet—Articles of Personal Adornment—Articles of Utility.—Protests 446836, etc., and 488385, etc., of Emrich, King & Schorsch (New York), and protests 421594, etc., of C. H. Wyman & Co. (St. Louis). Opinions by Chamberlain, G. A.

Protests sustained as to imitation jet articles, silver pencil holders, and coin boxes. United States *v.* Beierle (1 Ct. Cust. Appls., 457; T. D. 31506), G. A. 7019 (T. D. 30612), and G. A. 7129 (T. D. 31089) followed.

No. 26908.—Toy Magic-Lantern Slides.—Protest 476004 of Strobel & Wilken Co. (Boston). Opinion by Chamberlain, G. A.

Protest sustained as to toy magic-lantern slides on the authority of United States *v.* Borgfeldt (1 Ct. Cust. Appls., 370; T. D. 31455).

No. 26909.—Kippered Herring.—Protest 511626 of A. A. Rowe & Son Co. (Boston), protests 508028, etc., of Robert C. Cornett & Co. et al. (Denver), and protest 506338 of Koons, Wilson & Co. (Philadelphia). Opinions by Chamberlain, G. A.

Protests sustained as to kippered herring. United States *v.* Rosenstein (1 Ct. Cust. Appls., 304; T. D. 31357) followed.

No. 26910.—Dried Fish.—Protest 508029 of Buji Kashino (Denver). Opinion by Chamberlain, G. A.

Protest sustained as to dried fish in 1-pound paper packages on the authority of United States *v.* Yamashita (1 Ct. Cust. Appls., 341; T. D. 31435).

No. 26911.—Protests Overruled.—Protests 409204 and 490510, etc., of Robert B. Ways, and protest 505341 of Gabriel & Schall (Baltimore), protest 505450–37848 of Charles D. Stone & Co. (Chicago), protests 401595, etc., of Gabriel & Schall et al., and protest 458242 of A. A. Vantine & Co. (New York), and protest 510657 of Henry Rohner Co. (Philadelphia). Opinions by Chamberlain, G. A.

Protests overruled for want of merit.

Before Board 1, October 21, 1911.

No. 26912.—Imitation Jet—Cut Paste Articles.—Protests 457843, etc., of A. T. Lewis & Son Dry Goods Co. (Denver), protest 301122 of George C. Poirier and protest 246436 of A. Trenkmann (New York), and protest 382286 of W. Bodek Co. (Philadelphia). Opinions by Sharretts, G. A.

Protests sustained as to imitation jet articles and cut paste articles. United States *v.* Beierle (1 Ct. Cust. Appls., 457; T. D. 31506) and G. A. 6995 (T. D. 30444) followed.

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No. 26913.—Rubber Sash Brooches—Jewelry.—Protest 372099 of H. Wolff & Co. (New York). Opinion by Sharretts, G. A.

Sash brooches made of vulcanized-rubber scrollwork, having the customary brooch pin and catch attached, classified as jewelry under paragraph 434, tariff act of 1897, were held dutiable as manufactures of hard rubber (par. 450). Protest sustained on the authority of G. A. 5624 (T. D. 25152).

No. 26914.—Glass Disks for Goggles.—Protest 380206 of Motor Car Equipment Co. (New York). Opinion by Sharretts, G. A.

Protest sustained as to glass disks for automobile goggles. United States *v.* American Thermo-Ware Co. (T. D. 31571).

No. 26915.—Shell Cameos.—Protest 410121 of Frederics (New York). Opinion by Sharretts, G. A.

Protest sustained as to shell cameos on the authority of G. A. 6936 (T. D. 30068).

No. 26916.—Mesh Bags.—Protest 501781 of Dingelstedt & Co. Opinion by Sharretts, G. A.

Bags of white-metal mesh, valued at less than $2 per dozen, and gun-metal mesh bags, classified as articles of personal adornment under paragraph 448, tariff act of 1909, were held dutiable as manufactures of metal, as claimed by the importers.

No. 26917.—Rosaries.—Protest 242504 of Wilfred Schade & Co. (St. Louis). Opinion by Sharretts, G. A.

Protest sustained as to rosaries on the authority of G. A. 7053 (T. D. 30731).

No. 26918.—Olive Oil in Tins.—Protest 516259 of Eastern Drug Co., protest 274343 of E. H. Burr (New York), and protests 257233, etc., of J. M. Oliver & Sons (Philadelphia). Opinions by McClelland, G. A.

Protests sustained as to olive oil in 5-gallon tins. Note Abstract 25549 (T. D. 31589).

No. 26919.—Fur Waste.—Protests 496918, etc., of Fuchs & Co., and protest 470874 of Thomas Meadows & Co. (New York). Opinions by McClelland, G. A.

Protests sustained as to fur waste. United States *v.* Hatters' Fur Exchange (1 Ct. Cust. Appls., 198; T. D. 31237) followed.

No. 26920.—Fur Skins, Dressed.—Protests 482594, etc., of Fuchs & Co., and protest 550876 of Thomas Meadows & Co. (New York). Opinions by McClelland, G. A.

Protest sustained as to furs dressed on the skin on the authority of G. A. 7063 (T. D. 30765).

No. 26921.—Buff Leather—Split Leather.—Protests 448175, etc., of Evan Arthur Leigh (Boston).

McClelland, *General Appraiser:* The merchandise covered by these protests is invoiced as "leather hides" and was returned by the appraiser as "finished" leather. Duty was assessed by the collector at the rate of 15 per cent ad valorem under paragraph 451 of the tariff act of 1909, and it is claimed that duty should have been assessed at only 5 per cent ad valorem under said paragraph 451, or in the alternative at 7½ per cent under paragraph 450 of said act.

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The testimony, all of which was taken at the port of Boston, is quite voluminous, and, strangely, practically all of it is directed to the question as to whether the leather involved was cut into forms "suitable for conversion into manufactured articles," and therefore subject to the additional 10 per cent provided for in the proviso of paragraph 451. As this question was not in issue, all the testimony bearing upon it is, of course, extraneous.

It is evident that duty was assessed under the provision for "dressed upper and all other leather" in paragraph 451 on the theory that there was no provision under which the leather in question was specifically provided for.

Protestant called as his first witness the assistant appraiser who examined and passed this leather and returned it with advisory classification, as ultimately made by the collector, and he testifies that the leather has been "split" and "buffed," and his statement in this behalf stands on the record uncontradicted.

We therefore sustain the claim for duty at the rate of 7½ per cent under paragraph 450, and the decisions of the collector are reversed accordingly.

No. 26922.—Apron Leather.—Protests 506209, etc., of Richards, Atkinson & Haserick et al. (Boston). Opinion by McClelland, G. A.

Protests sustained as to apron leather. United States *v.* Richards (1 Ct. Cust. Appls., 537; T. D. 31548) followed.

No. 26923.—Willow Baskets—Shida Baskets.—Protests 488866, etc., of Jordan-Marsh Co., and protests 418005, etc., of S. Y. Tank & Co. et al. (Boston), protests 428901-33590, etc., of American Shipping Co. et al. (Chicago), protest 508027 of American Import Co. (Denver), and protest 495227 of M. J. Brandenstein & Co. (San Francisco). Opinions by McClelland, G. A.

Protests sustained as to willow baskets and shida baskets on the authority of Brody *v.* United States (T. D. 31573) and Abstract 26782 (T. D. 31912).

No. 26924.—Protests Overruled.—Protest 449015 of Stickley Bros. Co. (Grand Rapids), protests 444816, etc., of Henry Bischoff & Co., protests 481495, etc., of R. F. Downing & Co. et al., protests 509616 and 509619 of E. B. Goodman & Co., protest 402842 of Knauth, Nachod & Kuhne, protests 505059, etc., of Kornbluth & Harris, protest 511906 of R. Schroeder, protests 519761, etc., of Ernest Smellie, protest 403505 of H. S. Tavshanjian, protests 506629, etc., and 509836 of A. A. Vantine et al., and protest 482685 of Yamanaka & Co. (New York), protest 506720 of E. Dillingham (Ogdensburg), and protest 508111 of Kind & Landesmann (Philadelphia). Opinions by McClelland, G. A.

Protests overruled for want of merit.

No. 26925.—Hydroxide of Chrome.—Protests 450979, etc., of Farbenfabriken of Elberfeld Co. (New York). Opinion by Chamberlain, G. A.

Protests sustained as to hydroxide of chrome. United States *v.* Continental Color & Chemical Co. (T. D. 31679) followed.

Before Board 2, October 21, 1911.

No. 26926.—Tissue Paper.—Protest 534857 of Columbia Ribbon & Carbon Manufacturing Co. Opinion by Fischer, G. A.

Merchandise inadvertently classified as cigarette paper under paragraph 475, tariff act of 1909, was held dutiable as tissue paper (par. 410), as claimed by the importers.

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(T. D. 31941.)

Screens.

MORIMURA BROS. *v.* UNITED STATES (No. 94).

COTTON SCREENS IN A FRAMEWORK OF WOOD.

On a review of the statutes and the decisions founded on the statutes, it is held that screens with panels of cotton, ornamented with embroidered designs or with figures appliquéed thereon, were not dutiable as furniture or as a manufacture of cotton under tariff act of 1897, but were dutiable under paragraph 339 of that act at 60 per cent as "other articles" embroidered or appliquéed.

United States Court of Customs Appeals, October 12, 1911.

TRANSFERRED from United States Circuit Court for Southern District of New York, G. A. 6605 (T. D. 28204).

[Decision affirmed.]

Joseph G. Kammerlohr (*John Giblon Duffy* of counsel) for appellants.

D. Frank Lloyd, Assistant Attorney General (*Martin T. Baldwin* on the brief), for the United States.

Before MONTGOMERY, SMITH, BARBER, and MARTIN, Judges.

SMITH, Judge, delivered the opinion of the court:

The goods involved in this case are screens, the panels of which are of cotton in a framework of wood. The panels of some of the screens are ornamented with designs embroidered on the cloth and the panels of others with embroidered figures or designs which are appliquéed to the cloth. The collector of customs at the port of New York classified the screens as silk-embroidered articles and assessed them for duty at 60 per cent ad valorem under the provisions of paragraph 390 of the tariff act of 1897, the parts of which material to the case are as follows:

390. Laces, * * * embroideries and articles embroidered by hand or machinery, or tamboured or appliquéd, * * * all of the above-named articles made of silk, or of which silk is the component material of chief value, not specially provided for in this act, * * * sixty per centum ad valorem: * * *.

The importers objected to the classification and the duty imposed, and among other grounds of protest the claim was set up that the goods were dutiable either at 35 per cent ad valorem as house furniture or manufactures of wood under paragraph 208, or at 45 per cent ad valorem as manufactures of cotton under paragraph 322, which paragraphs are as follows:

208. House or cabinet furniture, of wood, wholly or partly finished, and manufactures of wood, or of which wood is the component material of chief value, not specially provided for in this act, thirty-five per centum ad valorem.

322. All manufactures of cotton not specially provided for in this act, forty-five per centum ad valorem.

As it appeared on the hearing that none of the screens was made of silk and that all of them were composed in chief value of cotton,

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the Government admitted that they were not embroidered articles made of silk or of which silk was the component material of chief value and that therefore they were not dutiable under paragraph 390, which was the paragraph under which they were assessed for duty by the collector. The Government claimed, however, that the rate of duty imposed was correct and should be sustained under the provisions of paragraph 339, which reads as follows:

339. Laces, lace window curtains, tidies, pillow shams, bed sets, * * * embroideries and all trimmings, * * * wearing apparel, handkerchiefs, and other articles or fabrics embroidered in any manner by hand or machinery, whether with a letter, monogram, or otherwise; tamboured or appliquéed articles, fabrics or wearing apparel; * * * all of the foregoing, composed wholly or in chief value of flax, cotton, or other vegetable fiber, and not elsewhere specially provided for in this act, * * * sixty per centum ad valorem: *Provided*, That no wearing apparel or other article or textile fabrics, when embroidered by hand or machinery, shall pay duty at a less rate than that imposed in any schedule of this act upon any embroideries of the materials of which such embroidery is composed.

The board decided that the screens were dutiable under paragraph 339, as claimed by the Government, and the importers appealed.

Counsel for the importers argue that the decision of the board should be reversed: First, because the screens imported are house furniture of wood and therefore dutiable under paragraph 208; second, because the screens are embroidered or appliquéed articles not of the kind, class, or nature of those mentioned in paragraph 339, and are therefore not dutiable thereunder; third, because the screens, if not dutiable as house furniture of wood, are dutiable as manufactures of cotton not specially provided for under paragraph 322.

Giving to words their strict meaning rather than the signification resulting from a careless use of them, screens such as those imported are not house furniture at all, but house furnishings—that is to say, articles designed more for the ornamentation of the house than for the personal use or convenience and comfort of its occupants. The term "furniture" as ordinarily used may mean that with which anything is furnished, supplied, or equipped. House furniture has a restricted signification, however, which does not cover everything with which a house may be furnished, supplied, or equipped. House furniture, in these modern times, has come to denote those articles of household utility which were formerly made of wood and which are designed for the personal use, convenience, and comfort of the dweller. House furnishings, on the other hand, are the subsidiary adjuncts and appendages of the house, designed for its ornamentation or which are of comparatively minor importance so far as personal use, convenience, and comfort are concerned. Chairs, stools, tables, writing desks, wardrobes, bureaus, bedsteads, and chiffoniers are truly house furniture, and tidies, pillow shams, bed sets, window

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curtains, and ornamental screens are just as truly house furnishings. If we are correct in our conclusion that ornamental screens such as those imported are house furnishings, it can not be said that no articles of the same general class or nature were provided for in paragraph 339. Neither can it be said that no article approximating them in character is therein mentioned. Screens serve practically the same object as window curtains. They shield the occupants of the dwelling or room from light, heat, and observation just as do curtains, and after all in purpose they are really nothing other than framed movable curtains. Therefore, even if the proviso to paragraph 339 be limited as contended to articles which are *ejusdem generis* with the articles previously mentioned therein, it would seem that the provisions of the proviso are applicable to ornamental embroidered screens which are of the same general class, nature, and kind as other house furnishings specifically enumerated and in particular of the same class and kind as window curtains. But however that may be, we think that the legislative history of paragraph 339 is such as to leave no reasonable doubt that Congress intended that the proviso thereto should extend to every embroidered article in the tariff act unless excluded from the operation of the proviso by apt language to that effect, and that the embroidered articles not having been so excluded are dutiable as assessed. Paragraph 373 of the tariff act of 1890 was the prototype of paragraph 339 of the tariff act of 1897 and reads in part as follows:

373. Laces, edgings, embroideries, * * * lace window curtains, and other similar tamboured articles, and articles embroidered by hand or machinery, embroidered and hemstitched handkerchiefs, * * * all of the above-named articles, composed of flax, jute, cotton, or other vegetable fiber, or of which these substances or either of them, or a mixture of any of them is the component material of chief value, not specially provided for in this act, sixty per centum ad valorem: *Provided*, That articles of wearing apparel, and textile fabrics, when embroidered by hand or machinery, and whether specially or otherwise provided for in this act, shall not pay a less rate of duty than that fixed by the respective paragraphs and schedules of this act upon embroideries of the materials of which they are respectively composed.

Under this paragraph of the tariff act of 1890, the board in T. D. 11375 decided that screens composed of a framework of bamboo with a center piece of embroidered silk were, under the testimony, *in chief value of wood*, and therefore dutiable at 35 per cent ad valorem, under paragraph 230 of that act, which provided for house or cabinet furniture of wood, manufactures of wood, or of which wood is the component material of chief value. This at least impliedly held that screens of that character were not covered by the proviso to paragraph 373, declaring that articles of *wearing apparel* and *textile fabrics* when embroidered by hand or machinery, whether specially or otherwise provided for in the act, should not pay a less

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rate of duty than that fixed by the respective paragraphs and schedules of the act upon embroideries of the materials of which they were respectively composed. In the case of the China & Japan Trading Co., Ltd. (T. D. 13663), the board found that screens composed of wood and cotton embroidered, which were assessed at 60 per cent ad valorem under paragraph 373 of the tariff act of 1890, and which were claimed, among other things, to be house furniture of wood, or manufactures of wood, were *composed in chief value of cotton cloth embroidered* and decided that they were dutiable as assessed. In that decision the board took occasion to refer to its previous decision as to Japanese screens in T. D. 12966, and to say that the board's remark that screens with silk and cotton panels, silk chief value, were erroneously classified as embroideries was *dictum*. These decisions informed Congress that paragraph 373 of the tariff act of 1890 was not sufficiently comprehensive to embrace embroidered articles which were not in chief value of cotton, and with that information before it, it passed Schedule J of the tariff act of 1894 and paragraph 276 thereof, which in part reads as follows:

276. Laces, * * * embroideries, * * * lace window curtains, tamboured articles, and articles embroidered by hand or machinery, embroidered handkerchiefs, * * * all of the above-named articles, composed of flax, jute, cotton, or other vegetable fiber, or of which these substances or either of them, or a mixture of any of them is the component material of chief value, not specially provided for in this act, fifty per centum ad valorem.

It will be observed that the language in this paragraph was very broad and in terms covered embroideries, articles embroidered by hand or machinery, and embroidered handkerchiefs composed of cotton or of which cotton was the component material of chief value, and not specially provided for. Nevertheless, if it was the legislative intention to remedy any of the deficiencies of paragraph 373, Congress was soon brought to a realization of the fact that that purpose had not only not been attained, but that embroidered articles of wearing apparel and embroidered fabrics, if specially provided for, had been released from the embroidery duty by the omission of the proviso to paragraph 373 of the tariff act of 1890. In the case of the United States *v.* Einstein (78 Fed. Rep., 797–799) the court, speaking of the proviso to paragraph 373 of the tariff act of 1890, stated that it was for the purpose of making it certain that *no embroidered article of wearing apparel or embroidered textile fabric*, however named or provided for in the act, should escape an embroidery duty, and that the omission of the proviso from the act of 1894 released from the embroidery duty any embroidered article of wearing apparel or embroidered fabric if it was specially or otherwise provided for in the act.

With this as the status of the legislation in 1890 and 1894, and the decisions thereunder, Congress was confronted again in 1897 with the proposition that embroidered articles not specifically subjected

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to the embroidery duty, and which were otherwise specially provided for, would escape the duty imposed on articles embroidered with like materials. Accordingly, in the act of 1897 the proviso to the act of 1890 was restored to the tariff act in an amended form, which included not only *wearing apparel* and *textile fabrics*, but other embroidered articles. It is important to note that the language used in the proviso to paragraph 339 of the act of 1897 was stronger than that employed in paragraph 373 of the act of 1890, and as if to emphasize its intention to subject all embroidered articles to the conditions of the proviso, unless specially excluded, Congress put the proviso in the negative form—that is to say, it provided that "no wearing apparel *or other article* or textile fabrics when embroidered by hand or machinery, shall pay duty at a less rate than that imposed in any schedule of this act upon any embroideries of the materials of which such embroidery is composed." As "wearing apparel" and "textile fabrics" are general terms and cover completely their respective classes, the words "other article" can not be construed to refer to things *ejusdem generis*. The expression "wearing apparel" comprises all kinds of wearing apparel, "textile fabrics" all kinds of textile fabrics, and to give to the words "or other article" no broader interpretation than that of "other articles of wearing apparel" or "other articles which are textile fabrics" would convert the added enumeration into mere surplusage. The proviso to paragraph 339 of the tariff act of 1897 would thus become practically a replica of the proviso to paragraph 373 of the tariff act of 1890, and we would be put in the position of assuming that the additional language contained in the former gave it no wider signification than that accorded to the latter by the tribunals whose duty it was to interpret it. Such an assumption we can not make without doing violence to what we consider the manifest intent of Congress and a settled rule of statutory interpretation, which has been aptly stated as follows:

> The rule of *ejusdem generis* is only a rule of construction to aid in arriving at the real legislative intent. It is not a cast-iron rule, it does not override all other rules of construction, and it is never applied to defeat the real purpose of the statute as that purpose may be gathered from the whole instrument. Whilst it is aimed to preserve a meaning for the particular words, it is not intended to render meaningless the general words. Therefore, where the particular words exhaust the class the general words must be construed as embracing something outside of that class. If the particular words exhaust the *genus* there is nothing *ejusdem generis* left, and in such case the general words must be given a meaning outside of the class indicated by the particular words or it must be said that the general words are meaningless, thus sacrificing the general words to preserve the particular words. In that case the rule of *ejusdem generis* would defeat its own purpose. National Bank of Commerce *v.* Ripley (161 Missouri, 126, 132); United States *v.* Mescall (215 U. S., 26, 31).

Whether the embroidered screens are or are not house furniture of wood, they are articles embroidered by hand or machinery, and not being specially excluded from the operation of the proviso to para-

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graph 339, they are dutiable as therein prescribed. Kaufmann *v.* United States (128 Fed. Rep., 468); Lichtenstein *v.* United States (154 Fed. Rep., 736).

Whether the screens which are appliquéed are embroidered articles within the intent of the proviso it is unnecessary to decide. The designs on those screens, instead of being embroidered on the cloth of the screen, appear to have been embroidered separately and then stitched to the screen. They are therefore clearly articles which are appliquéed. It is found by the board and practically admitted by counsel for the importers that all the screens are in chief value of cotton. Wood is not the predominant material in the construction of the screens and serves no other purpose than that of giving them a definite shape and form. The important essential part of the screen is the embroidered or appliquéed cotton cloth, which is both the predominant material and the component material of chief value. As we do not consider the screens as house furniture at all, and certainly not house furniture of wood, we think that the appliquéed screens fall directly within the following language of paragraph 339:

* * * Tamboured or *appliquéed articles*, fabrics, or wearing apparel, * * * all of the foregoing, composed wholly or in chief value of flax, *cotton*, or other vegetable fiber, and not elsewhere specially provided for in this act, * * * sixty per centum ad valorem—

and are therefore dutiable as assessed.

The decision of the Board of General Appraisers is *affirmed.*

DE VRIES, Judge, having participated in the decision of the board, did not sit.

(T. D. 31942.)

Embroidered initials.

WOODRUFF & CO. *v.* UNITED STATES (No. 195).

SHIRTS WITH EMBROIDERED INITIALS.

Initials embroidered on cotton shirts makes of the shirts embroidered articles, and the importation was dutiable as such under paragraph 339. tariff act of 1897.

United States Court of Customs Appeals, October 12, 1911.

TRANSFERRED from United States Circuit Court for Southern District of New York, Abstract 22650 (T. D. 30314).

[Decision affirmed.]

Brown & Gerry for appellants.

D. Frank Lloyd, Assistant Attorney General (*Charles E. McNabb* on the brief), for the United States.

Before MONTGOMERY, SMITH, and BARBER, Judges.

SMITH, Judge, delivered the opinion of the court:

The firm of A. J. Woodruff & Co. imported at the port of New York certain cotton shirts for men, embroidered below the waist line

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with initials for the identification of the garments. This merchandise was classified by the collector of customs as embroidered cotton wearing apparel and he accordingly assessed it for duty at 60 per cent ad valorem under paragraph 339 of the tariff act of July 24, 1897, the part of which material to this case reads as follows:

339. * * * Embroideries and all trimmings, * * *; wearing apparel, handkerchiefs, and other articles or fabrics embroidered in any manner by hand or machinery, whether with a letter, monogram, or otherwise; * * * all of the foregoing, composed wholly or in chief value of flax, cotton, or other vegetable fiber, and not elsewhere specially provided for in this act, * * * sixty per centum ad valorem: *Provided*, That no wearing apparel or other article or textile fabrics, when embroidered by hand or machinery, shall pay duty at a less rate than that imposed in any schedule of this act upon any embroideries of the materials of which such embroidery is composed.

The importing firm protested that the shirts were not embroidered within the meaning of paragraph 339 or the proviso thereof and that they were dutiable either at 45 per cent ad valorem as manufactures of cotton or other vegetable fiber under paragraphs 322 and 347 or at 50 per cent ad valorem as wearing apparel composed of cotton or other vegetable fiber under the provisions of paragraph 314, which in part reads as follows:

314. Clothing, ready-made, and articles of wearing apparel of every description, including neck-ties or neckwear composed of cotton or other vegetable fiber, or of which cotton or other vegetable fiber is the component material of chief value, made up or manufactured, wholly or in part, by the tailor, seamstress, or manufacturer, and not otherwise provided for in this act, fifty per centum ad valorem: * * *.

The Board of General Appraisers overruled the protest and the importers appealed.

The goods were returned by the appraiser as "embroidered cotton wearing apparel."

It is established by the evidence in the case that the goods involved in the appeal are men's shirts made of cotton and that below the waist line near the lower left-hand corner of the bosom there are initial letters in red thread worked in by the needle. These initials are raised above the surface of the cloth and an examination of the illustrative samples in evidence clearly shows that they are made with an embroidery stitch and that they are in truth and in fact embroidered. Indeed they are so designated by the importer himself, who was the only witness who appeared on the hearing. Notwithstanding the fact, however, that the shirts are truly embroidered with these initials counsel for the appellants contend that such an embroidery on the shirts does not constitute "wearing apparel embroidered in any manner" within the meaning of paragraph 339. In this behalf it is argued that the embroidery must be ornamental and not utilitarian in character and that as the initials are designed solely for the utilitarian purpose of identification and are so placed

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on the shirt that they can not be seen when the garment is worn they are in no sense ornamental. We can not agree with this contention of the importers. The initials are not plain or ordinary in character. They are embroidered initials made with the true embroidery stitch and are something more than the plain or ordinary initial produced by the stamp or stencil. They are more attractive and more pleasing to the eye than letters less elaborately produced and must therefore be regarded as ornamental letters as contradistinguished from less pretentious productions. Even if the embroidery must be ornamental in order to constitute an embroidery, the initials on the shirt clearly and unmistakably fall within that class.

Counsel for the importers, however, insist, in effect, that however ornamental the initials in themselves may be, they are no ornament to the shirt and serve only a useful purpose. That we can not concede. They are an addition to the shirt which contributes to its beauty and elegance, and to that extent they are ornamental within the definition of that word. To the shirt they give an appearance which the stenciled or stamped initial could not give—an appearance, by the way, calculated and designed to catch and please the eye of the purchaser. It can scarcely be said, therefore, that the sole object of the initials is utilitarian. Indeed it appears from the evidence that such initials are not put on the ordinary shirt. The Circuit Court of Appeals for the Second Circuit, in the case of United States *v.* Harden (68 Fed. Rep., 182), held that handkerchiefs composed of cotton, hemstitched and embroidered with an initial, were not classified in the speech of commerce as embroidered, and that the embroidery of a single letter thereon was so limited in extent that the handkerchiefs should not be regarded as embroidered. The principle laid down in this case was subsequently affirmed in the case of United States *v.* Amster (71 Fed. Rep., 958). Subsequent to these decisions, however, Congress, by the tariff act of July 24, 1897, broadened the language of the tariff act of 1890 so as to cover not only wearing apparel "embroidered by hand or machinery," but also wearing apparel "embroidered *in any manner* by hand or machinery, *whether with a letter or monogram or otherwise.*" In the light of this change it would seem that the only question to be determined in this case is, Are the initials embroidered? As that fact is substantially admitted, or at all events clearly shown by the evidence, it would seem that there is nothing left to the case. The conclusion here reached is not in conflict with the decision of the Circuit Court of Appeals in the case of Morris European & American Express Co. *v.* United States (T. D. 28170), in which case the Circuit Court of Appeals adopted the views of the dissenting opinion and reversed the board. In that case General Appraiser De Vries, who dissented, found that the initials were

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stitched in by a process which was not of the character or nature of embroidery. The same general appraiser who dissented in that case finds that the initials in this case are embroidered.

The decision of the Board of General Appraisers is *affirmed*.

DE VRIES, Judge, having participated in the decision below, did not sit.

(T. D. 31943.)

Shortage.

UNITED STATES *v.* BROWN (No. 130). UNITED STATES *v.* KWONG TAI CHONG (No. 131). UNITED STATES *v.* QUONG YEE WO (No. 132).

SHORTAGE OF BOTTLES PACKED IN CASES.

Proof of discovery of shortage by an unofficial examination after packages have been discharged from vessel and after surrender of manual possession of the packages by customs officers is not sufficient by itself to support a claim that the goods have not been imported.

United States Court of Customs Appeals, October 12, 1911.

TRANSFERRED from United States Circuit Court for Southern District of New York, Abstract 21075 (T. D. 29700).

[Decision reversed.]

D. Frank Lloyd, Assistant Attorney General (*Charles E. McNabb* on the brief), for the United States.

Brown & Gerry for the appellees.

Before MONTGOMERY, SMITH, BARBER, and DE VRIES, Judges.

SMITH, Judge, delivered the opinion of the court:

A consignment of Chinese wines put up in bottles and packed in cases was imported in December, 1907, and January, 1908, at the port of New York. After arrival a percentage of the cases was designated and retained for examination by the collector. The rest of the importation was turned over to the importers on their general bond, which provided that the packages delivered to them would be returned unopened to the collector on his order at any time within 10 days after report to him of the appraisal of the retained packages and that the bond should be forfeited if in the meantime any package thus subjected to the order of the collector should be opened without his consent or that of the surveyor in writing. The owners, after receipt of the merchandise, discovered that 7 of the original packages were short of the full number of 18 bottles which each case was supposed to contain. In the cases claimed to be short the number of bottles found therein and the number of bottles missing therefrom were as follows: Case No. 100 contained 2 bottles, missing 16 bottles; case No. 81 contained 6 bottles, missing 12 bottles; case No. 33 contained 2 bottles, missing 16 bottles; case No. 27 contained

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8 bottles, missing 10 bottles; case No. 124 contained 2 bottles, missing 16 bottles; case No. 114 contained 13 bottles, missing 5 bottles; case No. 149 contained 11 bottles, missing 7 bottles; total number missing, 82 bottles.

The shortages in cases Nos. 81, 100, 114, 124, and 149 were discovered on the day of delivery, and the shortages in cases Nos. 27 and 33 one week later. No customs officer was present when the discovery was made, and so far as the record discloses the collector received no notice of the fact that any of the merchandise was missing until the filing of the formal protests. On April 14, April 15, and June 6, 1908, the several entries were liquidated and duty assessed on the basis of 18 bottles to the case. The importers in due time protested that the missing bottles had not been imported and therefore claimed that they were not dutiable. The Board of General Appraisers sustained the protest and the Government appealed.

In support of its appeal the Government contends, first, that the nonimportation of the missing bottles not having been established by satisfactory evidence they must be considered as imported and therefore dutiable as assessed; second, that the missing merchandise is dutiable (*a*) because the deficiency not having been discovered as a result of an examination by the appraisers no allowance can be made therefor under the provisions of section 2921 of the Revised Statutes, (*b*) because the cases found without their full complement of bottles were opened by the importers in the absence of customs officers in violation of their bond and the conditions upon which delivery was made to them; third, that whatever might have been the number of bottles in the cases at the time of importation the goods should be assessed for duty on the basis of one dozen bottles to the case under the concluding proviso of paragraph 296 of the tariff act of 1897.

As to the first point, we are of opinion that upon the importers rested the burden of proving that the missing merchandise was not imported and never came within the tariff jurisdiction of the United States. The invoice and the entry of the goods raised the presumption that the goods in the quantities therein specified were actually imported, and to overcome that presumption it devolved on the importer to prove, at least *prima facie*, that the missing merchandise had never as a matter of fact arrived at the proper port of entry. (Merwin *v.* Magone, 70 Fed. Rep., 776, 777, 778.) The only evidence produced by the importers in that behalf was to the effect that after the arrival of the packages at the places of business of the owners an unofficial examination of some of the cases on the day of delivery and of others a week later disclosed that certain packages were short of their full complement of bottles. As this discovery was made after the packages were discharged from the vessel and after manual pos-

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session of such packages had been surrendered by the customs officers it can not be considered as evidence showing that the missing bottles were removed from the cases prior to the arrival of the latter within the jurisdiction of the port. The importers failed to make any proof that the cases released by the customhouse were preserved intact while in the possession of the drayman who delivered them or that they were so guarded and cared for that none of the bottles were or could have been removed therefrom while in transit or under his control. Neither was any evidence introduced to show that all reasonable precautions were taken to prevent the abstraction of bottles from the packages after their arrival at the storeroom of the importers, or that the merchandise was so protected that its surreptitious withdrawal was impracticable. For all that appears from the record some of the missing bottles may have been lost while in transit from the customhouse and others while the packages were in the hands of the owners. To hold that invoiced and entered goods may be relieved from duty merely on proof of the fact that they were not found in the packages by the importers after they had acquired and the customs officers had lost possession thereof, unaccompanied by any evidence showing or tending to show that the missing merchandise was not lost in transit from the customhouse or withdrawn after deposit in the importers' storerooms, would, in our opinion, establish a precedent likely to lead to very serious abuses.

The importers did prove that they had presented a claim of loss to the steamship company for 52 of the bottles not received by them and that such claim had been allowed and paid. Such an adjustment, even if it were competent evidence against the Government, which was not a party to it, falls far short of establishing that the merchandise for which the allowance was made was never imported and was lost, stolen, consumed, or destroyed before its arrival within the jurisdiction of its proper port of entry. The liability of shipping companies as carriers of merchandise does not usually terminate on the arrival of the vessel in port, but continues until the cargo is discharged overside, and the settlement proved by the importers might just as well have attached to merchandise lost in port as to merchandise lost beyond its confines for aught that appears to the contrary.

No appeal seems to have been taken by the Government to this court from the decision of the board covering the package numbered 171, included in protest No. 334018, and covering the package numbered 114, included in protest No. 325510. The decision of the board as to these two packages, therefore, can not now be questioned.

The point made in brief of counsel for the Government that no satisfactory evidence was adduced by the importers showing that the bottles missing from the other cases were not imported seems to us

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to be well taken and to be covered by proper assignments of error. Holding this view of the case it is unnecessary for us to pass upon the other points raised.

The decision of the Board of General Appraisers is *reversed*.

(T. D. 31944.)

Tetrachloride of tin.

CONSOLIDATED COLOR & CHEMICAL CO. *v.* UNITED STATES (No. 240).

TETRACHLORIDE OF TIN—LAC SPIRITS.

Tetrachloride of tin, while admittedly a chemical compound, was not dutiable as such under tariff act of 1897, and being, as appears from a preponderance of the testimony in this case, lac spirits, it was, as such, free of duty under that act

United States Court of Customs Appeals, October 12, 1911.

APPEAL from Board of United States General Appraisers, G. A. 7016 (T. D. 30584).

[Decision reversed.]

Curie, Smith & Maxwell (*W. Wickham Smith* and *Thomas M. Lane* of counsel) for the appellants.

D. Frank Lloyd, Assistant Attorney General (*Charles D. Lawrence* on the brief), for the United States.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

SMITH, Judge, delivered the opinion of the court:

The collector of customs at the port of New York classified an importation of tetrachloride of tin as a chemical compound and assessed it for duty at 25 per cent ad valorem under the provisions of paragraph 3 of the tariff act of July 24, 1897, which is as follows:

3. Alkalies, alkaloids, distilled oils, essential oils, expressed oils, rendered oils, and all combinations of the foregoing, and all chemical compounds and salts not specially provided for in this act, twenty-five per centum ad valorem.

The Consolidated Color & Chemical Co., which imported the merchandise, protested that the importation was one of lac spirits and therefore free of duty under paragraph 593 of the free list, which reads as follows:

Free list.—SEC. 2. That on and after the passage of this act, unless otherwise specially provided for in this act, the following articles when imported shall be exempt from duty:

* * * * * * *

593. Lac spirits.

The Board of General Appraisers overruled the protest and the importers appealed.

The importation is a tetrachloride of tin and is admittedly a chemical compound, but it is claimed to be a special class of chemical compound known as lac spirits, specifically provided for under that name,

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and entitled to free entry by virtue of the paragraph of the free list above cited. Whether the importation is lac spirits within the meaning of paragraph 593 is therefore the sole question to be determined. On this point four witnesses testified on the part of the appellant, three of them practical chemists of long experience and all four of them engaged in the business of manufacturing colors and dyes for periods of time running from 11 years to 25 years. The three chemists, Schweitzer, Clarkson, and Hirschberg, testified positively and directly that they were familiar with and had actually used a material known as lac spirits in the dyeing of textiles. Schweitzer became acquainted with it as early as 1880, and although he never sold the article he bought and actually applied it as a dyer in the years 1888 and 1889. Besides all that, Schweitzer stated that he himself had made lac spirits and used the product for dyeing experiments. Clarkson knew that there was such a material as lac spirits in 1887 and declared that the Quaker City Dye Works Co., with which he was connected as chemist, manufactured it to his knowledge for the purpose of dyeing scarlets for four and one-half years prior to 1897. To Hirschberg lac spirits became known about the year 1900 while he was in England.

From the testimony of the chemists just named it further appears that lac spirits were at one time extensively used as a mordant in dyeing with cochineal and lac dye and also as a weighting material in the dyeing of silks; that with the coming in of the coal-tar colors lac and cochineal dyes were driven out to a large degree, but that lac spirits are and must be still employed whenever lac and cochineal scarlets are used in dyeing; that the importation is a tetrachloride of tin and is manufactured by dissolving tin in hydrochloric or muriatic acid in the presence of nitric acid or by treating stannous chloride with nitric acid or latterly by the cheaper process of submitting tin directly to the action of chlorine gas; that lac spirits is tetrachloride of tin and, as known to three of the witnesses, was made generally by one of the two first methods; that lac spirits and the importation are both stannic chlorides, are both liquids, and are both represented by the same chemical formula $SnCl_4$; that lac spirits and the importation are used for the same purpose, namely, as a mordant for lac and cochineal dyes; that the only difference between them is that one is diluted with water and the other is not; that the tetrachloride of tin in controversy is really highly concentrated lac spirits and is imported in that form to save freight, but that it can not be used by the dyer in its concentrated state and must be diluted with water to protect from injury the textiles to be dyed; that stannous chloride of tin is not a tetrachloride of tin and is represented by a different formula, to wit, $SnCl_2$.

The chemists and the witness Allen, testifying for the importers, agreed that the stannous chloride can not be used for dyeing with lac

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or cochineal because it produces too dull a shade. Allen says, however, that although worthless for lac or cochineal dyes, it may be and is used for making eosine lakes and coal-tar colors. As against this evidence submitted by the appellant the Government offered the testimony of three witnesses, one of them a manufacturer of chemicals, inclusive of tetrachloride of tin, and the other two chemists. These witnesses were all men of long experience in their particular lines, but none of them, so far as shown, had ever been engaged in the business of dyeing or served as a chemist to a textile dyeing establishment. Admittedly none of them had ever used lac spirits for practical or commercial purposes, and admittedly none of them knew anything at all about the article under that name except what he had read of it in books. The witness Bower stated that he had consulted Watts's Dictionary, Ure's Dictionary, and Napier's book on dyeing, and that the formulas there given for lac spirits would not produce tetrachloride of tin, but stannous chloride. That the formula given in Ure's Dictionary for lac spirits was three parts of foaming hydrochloric acid and one part of tin, which formula he followed and secured a stannous and not a stannic salt. On cross-examination the attention of this witness was called to Ernest Spont's Workshop Receipts, and to the fact that the formula therein set out for lac spirits was 3 gallons of muriatic acid and 2 gallons of water, fed with 6 pounds of tin and 1 gallon of nitric acid. The witness said he did not agree with this formula because the books which he had consulted did not provide for nitric acid as a chemical component. He disagreed also with the following formula for lac scarlet set out in the work entitled "Practical Treatise on Dyeing and Calico Printing," by Robert McFarland, of the Scientific American, 1860, to wit: Mix 27 pounds of muriatic acid of the specific gravity of 1.17 with a pound and a half of *nitric acid* of 1.19; put this mixture in a soft glazed bottle and add to it in small bits at a time tin until 4 pounds are dissolved. He said that he did not consider lac spirits and lac scarlet spirits as identical. In this connection it might be well to note that lac spirits is the mordant for lac and cochineal, which are scarlet dyes.

Ralph W. Bailey stated that he had consulted Neile, Watts's Chemical Dictionary, Cooley's Book of Practical Receipts, and the Encyclopedia Britannica, and that the formula of those books for the making of lac spirits called for the dissolving of tin in hydrochloric acid, which would produce a stannous and not a stannic chloride. He stated further that he had been unable to find any description of lac spirits the manufacture of which called for the use of nitric acid.

Russell W. Moore, chemist in charge of the appraiser's laboratory at New York, stated that lac spirits is an obsolete term, and that in his investigation of it he found it described in old and obsolete works.

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That some authorities described it as produced by dissolving tin in hydrochloric acid and others by treating stannous chloride with *nitric acid*, producing what was then called in the old way nitrate muriate of tin; *that the only difference between nitrate muriate of tin and the importation is that one is an impure dilute article and the other a pure concentrated article; that tetrachloride of tin exists in both and is represented by the same chemical formula;* that the impurities in the dilute article are stannous salts and some nitric and hydrochloric acid in excess; that lac spirits belonged to both stannous and stannic salts in an indeterminate way.

On this state of the evidence the board found, first, that the merchandise imported was tetrachloride of tin, a stannic salt produced by dissolving tin in hydrochloric acid in the presence of nitric acid and used in the textile industries for mordanting, dyeing, and weighting; second, that lac spirits is a solution of tin in hydrochloric acid and therefore a solution of a stannous chloride or stannous salt in water; third, that tetrachloride of tin is neither commercially nor commonly known as lac spirits. To sustain the second finding of the board requires us to disregard the positive, direct, unimpeached testimony of at least three witnesses on the part of the importer who were eminently qualified to testify as to lac spirits and to accept that of witnesses whose sole information on the subject was derived from books, the status of which as standard authorities was not established. This we are not prepared to do, inasmuch as other books entitled to at least as much weight as those referred to by the witnesses for the Government fully sustained the statement of the importer's witnesses that lac spirits were made by dissolving tin in hydrochloric acid *in the presence of nitric acid*, thereby producing, according to the witness Schweitzer, a tetrachloride of tin, which is a stannic and not a stannous salt. If we reject the evidence of both lines of books as conflicting and lacking in probative force, the testimony of importer's witness stands uncontradicted and fully establishes that the importation and lac spirits are both tetrachloride of tin, manufactured from the same materials and in the same way. In analyzing the testimony it should not be forgotten that tin and hydrochloric acid produce a stannous chloride which is not tetrachloride of tin. If we accept one line of authorities we must accept the other, and to reconcile them no course is open except to conclude that the term "lac spirits" covered both the stannous chloride and the stannic chloride, and from that it would follow that *both* chlorides would be entitled to free entry.

As to the third finding of the board, that tetrachloride of tin is neither commercially nor commonly known as lac spirits, it is sufficient to say that whether tetrachloride of tin is now known as lac spirits is beside the question. Whether the article once commercially known as lac spirits is tetrachloride of tin is the point involved.

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If, when provision was made for lac spirits on the free list, there was an article commercially known by that name and that article, chemically speaking, was tetrachloride of tin, the fact that it subsequently lost its commercial name and took its chemical and scientific designation would not remove it from the free list or deprive it of the concession made by Congress to the article and not to its name. Beyond debate there was a material which at some time in the history of tariff legislation was either popularly or commercially known as lac spirits. Provision was made for it in the free list of the tariff act of 1890, and the United States General Appraisers, in T. D. 12953, held that the lac spirits there mentioned was a *dyestuff* and not a varnish. Subsequently, when the tariff act of 1897 was passed, lac spirits was continued on the free list, and that action on the part of Congress must be presumed to have been taken in the light of the appraisers' decision that there was an article known as lac spirits and that lac spirits was used for dyeing and not for varnishing. Whether lac spirits was a stannic chloride or a stannous chloride or both was not put in issue in T. D. 12953 and was, therefore, not tried or litigated in that case. What was said by the board in that behalf can not therefore be held to have been presumptively confirmed by a subsequent legislative enactment which repeated the language of the paragraph which was interpreted by the decision. On a protest that lac spirits was a varnish the board classified it as a dyestuff, and as to that classification, and nothing more, the legislature may be presumed to have approved the decision of the board.

Russell Moore, a witness for the Government, testified that lac spirits resulting from the chemical reaction of hydrochloric acid and nitric acid on tin would be an impure tetrachloride of tin as compared with the importation, which, he said, was a pure concentrated article. Admittedly lac spirits are diluted with water and the importation is not. That fact, however, affects only the strength of the article and does not alter essentially its nature and character as a mordant, which Congress intended to favor by putting it on the free list.

The board finds in its first finding that the importation is produced by dissolving tin in hydrochloric acid in the presence of nitric acid. It is established by the importers' evidence that lac spirits are made in exactly the same way. That being the case, any impurities found in the one must of necessity be found in the other, exclusive of water, if water can be considered an impurity. If it be true, as suggested by Dr. Moore, a witness for the Government, that the formula for making lac spirits would produce an impure tetrachloride of tin, contaminated by stannous salts, nitrate of tin, and some free nitric acid, it follows that the importation which is found to be made by the same method must contain the very same impurities.

The decision of the Board of General Appraisers is *reversed*.

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(T. D. 31945.)

Decalcomanias.

UNITED STATES *v.* BORGFELDT & Co. (No. 301). UNITED STATES *v.* STONE & DOWNER Co. (No. 302).

DECALCOMANIA TRANSFERS—LITHOGRAPHIC PRINTS.

Decalcomanias for ceramic decoration, the decorating to be done by transferring the figures and designs from the paper to pottery and fixing them on the pottery by burning or baking, are lithographic prints and were dutiable as such within the meaning of paragraph 400, tariff act of 1897.

United States Court of Customs Appeals, October 12, 1911.

APPEAL from Board of United States General Appraisers, G. A. 7035 (T. D. 30687).

[Decision affirmed.]

D. Frank Lloyd, Assistant Attorney General (*Martin T. Baldwin* on the brief), for the United States.

Comstock & Washburn (*Albert H. Washburn* of counsel) for appellees.

Before MONTGOMERY, HUNT, SMITH, BARBER, and DE VRIES, Judges.

SMITH, Judge, delivered the opinion of the court:

In these cases merchandise known as decalcomanias or decalcomanias in sheets was imported at the ports of Boston and New York and assessed for duty by the collectors of customs at those places at 3 cents per pound and 20 per cent ad valorem under the provisions of paragraph 398 of the tariff act of 1897, which reads as follows:

398. *Surface-coated papers not specially provided for in this act, two and one-half cents per pound and fifteen per centum ad valorem; if printed, or wholly or partly covered with metal or its solutions*, or with gelatin or flock, *three cents per pound and twenty per centum ad valorem;* parchment papers, two cents per pound and ten per centum ad valorem; plain basic photographic papers for albumenizing, sensitizing, or baryta coating, three cents per pound and ten per centum ad valorem; albumenized or sensitized paper or paper otherwise surface coated for photographic purposes, thirty per centum ad valorem.

Borgfeldt & Co., the importers at New York, protested that the decalcomanias imported by them were lithographic prints and as as such were dutiable at 20 cents per pound under paragraph 400, the pertinent parts of which are as follows:

400. Lithographic prints from stone, zinc, aluminum or other material, bound or unbound * * * on paper or other material not exceeding eight one-thousandths of one inch in thickness, twenty cents per pound; on paper or other material exceeding eight one-thousandths of one inch and not exceeding twenty one-thousandths of one inch in thickness, and exceeding thirty-five square inches, but not exceeding four hundred square inches cutting size in dimensions, eight cents per pound; exceeding four hundred square inches cutting size in dimensions, thirty-five per centum ad valorem; * * * [Then follow specific provisions for various special kinds of lithographs.]

The Stone & Downer Co., the importers at Boston, claimed that the decalcomanias which they imported were dutiable either as litho-

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graphic prints under said paragraph 400, or at 2½ cents per pound and 15 per cent ad valorem as surface-coated paper not specially provided for under the first clause of paragraph 398, or at 25 per cent ad valorem either as "all other paper not specially provided for," or as "printed matter * * * not specially provided for" under paragraphs 402 and 403, which said paragraphs are as follows:

402. Paper hangings and paper for screens or fireboards, and *all other paper not specially provided for* in this act, twenty-five per centum ad valorem; all Jacquard designs of one line paper, or parts of such designs, finished or unfinished, thirty-five per centum ad valorem; all Jacquard designs cut on Jacquard cards, or parts of such designs, finished or unfinished, thirty-five per centum ad valorem.

403. Books of all kinds, including blank books and pamphlets, and engravings bound or unbound, photographs, etchings, maps, charts, music in books or sheets, and *printed matter*, all the foregoing *not specially provided for* in this act, twenty-five per centum ad valorem.

The two protests were tried separately by the board, but the testimony taken in one case was made a part of the record in the other in so far as it might be material or pertinent to the issue, and to this method of procedure ordered by the board neither party now makes objection.

The claim of both protestants that the decalcomanias were lithographic prints was sustained by the Board of General Appraisers and the Government appealed.

It appears from the record and samples in evidence that the merchandise consists of sheets of paper 20 by 30 inches in size, covered with colored designs or figures repeated over and over again. The goods are imported for ceramic decoration, which is accomplished by transferring the figures and designs from the paper to pottery and fixing them there by burning or baking. The designs or figures referred to are the creations of an artist and are originally sketched by him in water colors. The sketch is then sent to a lithographer, who reproduces on transparent paper or celluloid the outlines of each color, and thus constitutes the pattern from which the outlines of the several colors are separately transferred by him to as many lithographic stones as there are colors. That is to say, each color is separately outlined on the stone and there are as many outlines placed on as many stones as there are colors in the design or figure. The outlines on the several stones are then etched out with acid by the lithographer, and thus is defined and established a printing surface for the color assigned to each particular stone. So etched, the several stones are ready for the press and the reception of their corresponding colors. The colors are either metals or metallic oxides which, with a flux and in the form of a powder, are mixed with printing oil and then spread on metal rollers covered with leather. These rollers are carried over the stone and ink its printing surface with the proper pigment. From the inked stones the sev-

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eral colors in their proper order are impressed in succession on appropriate paper until the design or figure is complete.

The paper upon which the decalcomania is printed is of a particular kind and quality, and is manufactured abroad by a process the details of which are fully known only to those who make a specialty of its manufacture. There are two grades of the paper, one known as simplex and the other as duplex paper. As far as we are able to gather, the simplex is a single layer of paper, while the duplex is composed of a thin, porous layer of tissue paper, bound by suction, it is said, to a layer of strong white paper, which serves as a backing. To serve the purpose of making decalcomanias, the paper, whether it be simplex or duplex, is surfaced with a solution of starch, and this in its turn is coated with dextrin or gum, the duplex paper being surfaced on the tissue-paper side. This coating of dextrin or gum receives from the stones the colored design or figure, and accomplishes, it seems, the double object of preventing the colors from running into the starch and paper and of fastening the design to the pottery. The layer of starch, on its part, prevents the gum from sticking to the paper, and when moistened with water permits the withdrawal of the paper, thus leaving the design or figure attached by the gum to the article to be decorated. The design or figure is then permanently fixed to the pottery by burning or baking. This briefly describes the process of manufacturing the decalcomanias and the commercial use to which they are put after completion.

The Government contends, first, that the goods under discussion are not lithographic prints; second, that the merchandise is surface-coated paper, wholly or partly covered with metal or its solutions; third, that if it be not surface-coated paper covered with metal or its solutions, it is surface-coated paper printed, or printed matter; and fourth, that if it be not surface-coated paper, it is paper not specially provided for.

We think that the evidence in the record clearly shows that the goods in question are lithographic prints within the meaning of paragraph 400 of the tariff act of 1897. The witnesses both for the Government and the importers do not differ materially as to the methods of manufacture and in effect agree that in all essential particulars the processes employed in the making of the ordinary lithographic print are substantially followed in the manufacture of the decalcomanias under consideration. The decalcomanias in question are printed in a lithographic establishment on a lithographic press from a lithographic stone, on which the design or figure has been first traced in lithographic ink and then etched out and prepared for printing by a lithographer. There are, it is true, some differences between the surface-coated paper upon which from 90 to 95 per cent of the ordinary lithographs are printed and the specially surface-

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coated paper upon which decalcomanias are impressed. These are differences, however, which do not affect the lithographic character of decalcomanias, but are rather differences which facilitate the use of lithographic prints for a special definite purpose. That is to say, the fact that a lithographic print is so made that it may be transferred to some object for the purposes of ornamentation makes it none the less a lithographic print because of that particular use of it. In this connection it might be well to observe that there is nothing in the make-up of the ordinary lithograph which necessarily or absolutely precludes the transfer of its colored design, figure, or picture to some other object. In fact the evidence is uncontradicted that long prior to the creation of the decalcomania the colors of lithographs were so transferred by pasting the color side to glass and then removing the paper after wetting it. True, such a transfer was done for amusement and was too laborious a process for commercial purposes. Nevertheless, the fact that the common lithograph could be and was so used is of value to show that feasibility of transfer is common to lithographs and decalcomanias. The fact that the decalcomania can be transferred more readily than the ordinary lithograph is important only to the extent that it shows that the decalcomania is an evolution of the lithograph. When the decalcomania was invented the custom of transferring lithographs became obsolete, and for 20 years the former served no other purpose than that of furnishing the amusement which transfers of the latter had originally afforded. That in the course of time a commercial use was found for the decalcomania makes it none the less a creation of lithography and none the less a lithographic print.

The Government also argues that the decalcomanias imported differ from lithographic prints in that some of the colors are not printed from the stone but are dusted on after the paper has left the press. We think the dusting on of the colors is like the special coating of the paper, a mere development of lithographic processes. In practice it was found that the first impression of some of the colors was too faint and that a repetition of the impress was necessary in order to accentuate them and make them more vivid. Moreover, experience proved that from the friction of repeated printing the printing surface of the stone was worn away to such a degree by certain metallic colors that sharpness of impression could not be obtained. To save the labor and cost of repeating the printing and to diminish the wear on the stone, manufacturers finally resorted to the device of dusting on the colors after the impress was taken and while it was still wet. At first dusting was done by hand, and later machinery for the purpose was introduced and used, although hand dusting is still followed, to some extent, especially where the more costly colors are used. Dusting, whether done by hand or machinery,

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is not peculiar, however, to decalcomanias. It is a method which may be and is actually employed in the making of ordinary lithographs and may be fairly considered in no other light than a natural and economic development of the art of lithography resulting from experience and the natural commercial tendency to reduce the cost of production.

As to the point made that the design or figure for ceramic decalcomanias is put upon the stone reversed as compared with the design or figure etched for the ordinary lithograph, it is sufficient to say that decalcomanias, even for pottery, are not always so made. Whether the picture is reversed or not depends entirely upon the design. If the design is such that the printing of it from a positive or negative stone makes no difference in the effect produced, the etching need not be reversed. If the picture when transferred to the pottery would present the appearance of having been put on "wrong end to" the etching is the reverse of that which would be employed for a chrome lithograph. For tariff purposes there is no real distinction, in our opinion, between negative and positive decalcomanias. The reversing of the etching is purely incidental to the design and the effect to be produced, and whether the decalcomania is printed from a positive etching—that is to say, from an etching the reverse of that used for the common lithograph, or from a negative etching, the same as that employed for such a lithograph—it is still a lithographic print. In one case the decalcomania may be called a negative lithographic print and in the other a positive lithographic print, but for all that both are lithographic prints. See United States *v.* Sussfield (1 Ct. Cust. Appls., 51); Edison *v.* Lubin (122 Fed. Rep., 240–242); Edison Mutoscope & Biograph Co. *v.* Edison Mfg. Co. (137 Fed. Rep., 262–266).

If we had any doubt as to whether the decalcomanias under discussion are properly dutiable as lithographic prints, that doubt would be dispelled by what seems to have been a very long-continued departmental practice. The tariff provision for lithographic prints appeared for the first time in the tariff act of 1890. From the date of the passage of that act until the year 1907, a period of 17 years, decalcomanias were assessed for duty as lithographic prints. Their classification as such prints seems to have been questioned for the first time about the year 1903 by the firm of Wakem & McLaughlin, of Chicago. This firm, representing Meyercord & Co., imported certain decalcomanias, which were classified by the collector as lithographic prints and accordingly assessed for duty at 20 cents per pound under paragraph 400 of the tariff act of 1897. The importers, frankly admitting that they represented domestic manufacturers of decalcomanias and desired a higher rate of duty, protested that the goods were labels printed in whole or in part of metal leaf and there-

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fore dutiable at 50 cents a pound. The Board of General Appraisers overruled the protest, but its decision was subsequently reversed by the Circuit Court for the Northern District of Illinois, Kohlsaat, judge, no opposition being presented by the Government. The decision of the Circuit Court, however, was not followed by the Treasury Department, which, after taking the opinion of the Attorney General, announced that it was not incumbent upon the department to accept the ruling of the court and instructed customs officers to continue to impose the rate of 20 cents per pound on such merchandise as lithographic prints. (T. D. 25848.)

The practice of classifying decalcomanias as lithographic prints was not again disputed until the year 1907. In that year Hempstead & Sons, representing, it seems, the same Meyercord Co., imported decalcomanias at Philadelphia, which were returned by the local appraiser as "surface-coated paper, printed," and assessed for duty at the rate of 3 cents per pound and 20 per cent ad valorem under the provisions of paragraph 398. The importers claimed that the merchandise was properly dutiable at 20 cents per pound as lithographic prints under the provisions of paragraph 400. On the hearing before the board the importers offered no evidence or testimony to sustain their contention or to support their protest. Special counsel representing the Meyercord Co. appeared, however, at the hearing and contended that neither the rate of duty assessed by the collector nor the rate claimed by the importers was correct. It was argued that mineral colors were used in printing the articles and that they should be assessed at the rate of 45 per cent ad valorem as articles in chief value of metal under the provisions of paragraph 193. The board declared the claim of special counsel to be without merit and, deciding that the decalcomanias were lithographic prints, sustained the protest. From this decision an appeal was taken to the United States Circuit Court, Eastern District of Pennsylvania, and in February, 1908, the court, after taking evidence in what was really an *ex parte* proceeding, found that the decalcomanias were surface-coated paper wholly or partly covered with metal, dutiable under paragraph 398, and a distinct article of commerce different from lithographic prints and printed matter both in manufacture and use.

A reading of the decision in that case in the light of the very complete record in this case leads us to the conclusion that the learned district judge was deprived of the advantage of a bona fide contest and that his findings of fact were based on a one-sided presentation of issues involved. We can not, therefore, give to his decision the weight which it certainly would have been entitled to receive had there been a genuine litigation of the matter. For the same reason that decision can not be considered as neutralizing the legal effect of the long-continued, uninterrupted, and well-established departmental practice which had theretofore existed.

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As we are of opinion that the goods covered by the protests are lithographic prints and dutiable as such it is unnecessary to enter upon a consideration of the several contentions of the Government which depended for their force on a contrary finding.

The decision of the Board of General Appraisers is *affirmed*.

(T. D. 31946.)

Gallilith combs.

STRAUSS & CO. *v.* UNITED STATES (No. 419).

COMBS MADE OF GALLILITH.

Since they most nearly resemble combs made of horn, in accordance with the terms of paragraph 481, tariff act of 1909, combs made of gallilith are dutiable under paragraph 463 of that act.

United States Court of Customs Appeals, October 12, 1911.

APPEAL from Board of United States General Appraisers, G. A. 7047 (T. D. 30725).

[Decision affirmed.]

Walden & Webster (*Henry J. Webster* of counsel) for appellants.

D. Frank Lloyd, Assistant Attorney General (*Wm. A. Robertson* on the brief), for the United States.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

SMITH, Judge, delivered the opinion of the court:

Gallilith combs imported at the port of New York were, by reason of their similitude to horn combs and in virtue of the provisions of paragraph 481 of the tariff act of August 5, 1909, assessed for duty by the collector of customs at 50 per cent ad valorem under paragraph 463, the part of which material to the case reads as follows:

463. * * * Combs, composed wholly of horn, or composed of horn and metal, fifty per centum ad valorem.

The importers in due time and form protested that the merchandise was not dutiable as assessed and among other grounds of protest, which it is unnecessary to consider, set up the claim that gallilith combs were dutiable as manufactured articles not provided for at 20 per cent ad valorem under the provisions of paragraph 480, which reads as follows:

480. That there shall be levied, collected, and paid on the importation of all raw or unmanufactured articles, not enumerated or provided for in this section, a duty of ten per centum ad valorem, and on all articles manufactured, in whole or in part, not provided for in this section, a duty of twenty per centum ad valorem.

The Board of General Appraisers overruled the protest and the importers appealed.

On the hearing before the board no evidence was introduced or offered in behalf of the importers. Two witnesses testified for the

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Government, and from their testimony it appears that the imported goods are fine combs made from a substance called gallilith, which is a product of sour milk. Combs manufactured from gallilith have, of course, the same identical use as combs made from any other material, and in style, shape, and appearance, as shown by the samples in evidence, they are very similar to combs made of horn, in fact "just like them," as stated by one of the witnesses. With this as the evidence, and as neither gallilith combs nor manufactures of gallilith were specially provided for in the tariff act of 1909, under which the importation was made, the board held that the goods were similar in use to the horn combs for which special provision was made in paragraph 463 and, therefore, dutiable under that paragraph by similitude. Counsel for the importers urge that paragraph 481 is not applicable to the goods in question and that they can not be made dutiable by similitude under the last clause of paragraph 463 for the reason that that clause is restricted to combs composed wholly of horn or horn and metal and therefore explicitly excludes all other combs from its provisions. The difficulty with this contention is that counsel has assumed that an express designation of a particular article is the same thing as an express exclusion of all others. If paragraph 463, under which the merchandise was assessed for duty, excludes all combs other than those mentioned therein, it must be held to do so, not by reason of express language to that effect, but because the specific designation of a particular article implies a legislative intent to exclude all others in the absence of any provision of law otherwise directing. The law, however, under which the goods were imported contains an express statutory declaration which does not permit of that implication, and the distinction between an implied exclusion and an express exclusion, ordinarily of little consequence, must be fully respected if effect is to be given to paragraph 481, a very important provision of the tariff act. That paragraph provides—

> That each and every imported article, not enumerated * * * which is similar, either in material, quality, texture, or the use to which it may be applied, to any article enumerated * * * as chargeable with duty, shall pay the same rate of duty which is levied on the enumerated article which it most resembles in any of the particulars before mentioned.

This provision specifically requires that imported articles which *are not enumerated* shall bear the same duty as articles which *are enumerated*, provided the former be similar to the latter either in material, quality, texture, or use. Such a requirement is wholly irreconcilable with the proposition that the duty imposed in some other part of the statute on a commodity therein specifically designated was intended by the legislature to apply to that commodity and no other. Of course, if Congress had provided in para-

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graph 463 for combs made of horn or of horn and metal, but not of gallilith, such a provision would have expressly excluded gallilith combs from that paragraph and made the similitude clause of paragraph 481 inapplicable to the goods under consideration. Not having done so, however, we can not imply that such was its intention in the face of an expressed direction that nonenumerated articles shall carry the same duty as the enumerated articles which such nonenumerated articles most resemble either in material, quality, texture, or use.

It is true that the similitude clause can not be applied to articles which are the same as the enumerated article and which are identical with the latter in material. Such articles are the same and not of a similar kind. The similitude clause is intended to apply only to articles which are different and distinct from the enumerated article, and the duty specifically attached to an article by reason of an improved condition which does not change its essential characteristics can not be affixed by similitude to the same article when not in that condition. So shells washed and cleansed of dirt and animal matter are not *similar* to "shells engraved, cut, ornamented or otherwise manufactured." Schoenemann *v.* United States (119 Fed. Rep., 584, 586). Bisque wares are not *similar* to "bisque wares if painted, tinted, stained, enameled, printed, gilded, or otherwise decorated or ornamented in any manner." Fensterer *v.* Ruhe (T. D. 31110). The principle that an article can not be made dutiable by similitude to the same article, made of the same material, in a more advanced stage of manufacture, has no application here, however, for the reason that while horn combs and gallilith combs are both combs, they are not combs made of the same material and are therefore distinctly different articles.

So far as we can discover no special tariff provision has ever been made for manufactures of gallilith, and subsequent to the tariff act of 1883 and until the passage of the tariff act of 1909 there was no specific provision for combs of any kind. Consequently gallilith combs brought into the country in 1907 and 1908 were held by the board to be dutiable as nonenumerated manufactured articles. Counsel for the importers argue that Congress must have had that decision in mind when it passed the tariff act of 1909, and that therefore when it provided for "combs composed wholly of horn or composed of horn and metal" it must be assumed that there was no legislative intent to change the rate which had theretofore been fixed by the board for combs made of gallilith. We do not think that such a conclusion legitimately follows or can be properly deduced from the history of the legislation or the facts in the case. A legislative adoption or approval of the interpretation given to any provision of a tariff act by the department of the Government charged

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with its execution or by the tribunals required by law to determine its meaning may be presumed when the legislation has been subsequently reenacted by Congress without change or modification affecting the provision interpreted. When, however, the legislation has been subsequently modified in any substantial particular relating to the provision interpreted, no such presumption arises. United States *v.* Cerecedo Hermanos y Compañia (209 U. S., 337–339); United States *v.* Falk & Bro. (204 U. S., 143–152); Komada & Co. *v.* United States (215 U. S., 392–397).

The act of 1897, under which the board decided that gallilith combs must be classified as nonenumerated manufactured articles, made no provision for combs of any kind, and therefore as the law then stood gallilith combs could not be made dutiable as combs either directly or by similitude. The tariff act of 1909 provided for combs made of horn and of horn and metal, and thus opened the door for the application of the similitude clause. We can not, therefore, presume that Congress, when it passed the tariff act of August 5, 1909, intended to continue in force the classification fixed by the board for gallilith combs under the act of 1897. Indeed, to do so would result in the absurdity of holding that the legislature approved and adopted an interpretation of a provision of law which was not in existence at the time the interpretation was made.

The decision of the Board of General Appraisers is *affirmed.*

(T. D. 31947.)

Onionskin paper.

KAHLEN *v.* UNITED STATES (No. 448).

1. "SUITABLE" DEFINED.

In the tariff law "suitable" means actually, practically, and commercially fit.

2. ONIONSKIN PAPER NOT PRINTING PAPER.

The rare and exceptional use of onionskin paper for printing purposes does not constitute it printing paper and it was dutiable as paper not specially provided for under paragraph 402, tariff act of 1897.

United States Court of Customs Appeals, October 12, 1911.

APPEAL from Board of United States General Appraisers, Abstract 23721 (T. D. 30800).

[Decision affirmed.]

Curie, Smith & Maxwell (*W. Wickham Smith* and *Thomas M. Lane* of counsel) for appellants.

D. Frank Lloyd, Assistant Attorney General (*Thomas J. Doherty* on the brief), for the United States.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

SMITH, Judge, delivered the opinion of the court:

The collector of customs at the port of New York classified an importation of glazed paper as paper not specially provided for and

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assessed it for duty at 25 per cent ad valorem under the provisions of paragraph 402 of the tariff act of July 24, 1897, the material parts of which paragraph read as follows:

402. Paper hangings and paper for screens or fireboards, and all other paper not specially provided for in this act, twenty-five per centum ad valorem; * * *.

The importer claimed that the merchandise was printing paper suitable for books and protested that as such printing paper the goods were dutiable at 15 per cent as valorem under the provisions of paragraph 396 of said act, the material parts of which are as follows:

396. Printing paper, unsized, sized, or glued, suitable for books and newspapers, * * * valued above five cents per pound, fifteen per centum ad valorem; * * *.

The Board of General Appraisers overruled the protest and the importer appealed.

On the hearing the importer sought to establish by seven dealers in paper, two dealers in book paper, three printers, and one dealer in printer's ink that the paper was suitable for printing books. The testimony of these witnesses was to the effect that judging from the appearance and finish of the paper, it could be printed on and that therefore it could be used and was a suitable paper for printing books. One of the witnesses had seen it used for printing a special edition of the bible, and one knew that it was sometimes used for printing circulars and drug catalogues. The importer himself stated that he had caused books to be printed on the paper in order to demonstrate that it could be used for that purpose. It further appeared from the testimony offered by the importer that the paper in question is variously known to the trade as manifolding paper, printing paper, or wrapping paper, and that it is used for the purposes indicated by those several names. The importer stated that it was also known to the trade as onionskin paper. All of the witnesses agreed that there are but few papers which can not be used for printing, and that most any paper can be printed upon if a suitable ink is employed. One of the witnesses stated that a book could be printed on almost anything in the paper line, and another that books had been printed even on blotting paper.

On the part of the Government, one importer and manufacturer of such paper as that imported, one importer and dealer of papers in general, and three printers testified that the merchandise was not paper suitable for the printing of books, and that although it might be printed upon it was not used by the trade as a printing paper save in exceptional cases. The manufacturers, importers, and dealers stated that the paper was known in the trade as onionskin or manifolding paper, that its introduction did away to a large extent with the old letter-press book, and that it was principally used as a manifolding typewriter paper for the making of carbon copies. The three printers testified that the paper was not suitable for the printing of

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books, that it was sometimes used for printing circulars, billheads, letterheads, price lists, and matter where lightness of weight was desired, but that its principal use was that of manifolding paper for making carbon copies on the typewriter; that thin paper is sometimes used in the printing of bibles, but that such paper is generally heavier and less transparent than that which is in controversy. The examiners testified that from 1890 until the filing of the protests in this case in 1902 such paper as that imported had never been classified as printing paper and had always been returned for duty either as a writing paper or as a paper not specially provided for.

After a careful analysis of all the testimony in the case and an examination of the samples in evidence, we think the importer has failed to prove satisfactorily that the imported merchandise is either printing paper or that it is suitable for the printing of books. While the witnesses produced by him testified broadly that the paper in question was printing paper suitable for the printing of books, their statement in that behalf is nothing more than a conclusion drawn by them from the fact that it could be printed upon and that in some exceptional cases it had been actually utilized for the printing of books. Such evidence can hardly be accepted as satisfactory proof of the nature of the goods or their suitability for the purpose alleged, especially when it is considered that it appears from the testimony that almost any paper may serve a printing purpose and that even blotting paper has been used for printing books. From the fact that a thing may be used or has been used for a particular end it does not necessarily follow that it is commercially suitable therefor, and evidence of a casual, incidental, exceptional, or possible use of a thing can not be accepted as proof of its suitability for such use. A house may be built of ice or of paper, but in this country at least such materials would hardly be regarded as suitable building materials. A thing to be suitable, as that term is commonly understood, must be fit and appropriate for the end to which it is to be devoted. In the tariff law the term "suitable" means actually, practically, and commercially fit. The record in this case shows, substantially without contradiction, that onionskin or manifolding paper is principally used as a typewriter paper for the making of carbon or other copies, and that far from being recognized by the commercial world as a paper suitable for printing books its use for that purpose is so rare that out of the 17 witnesses produced by the Government and the importer on this subject only two ever saw or heard of books being printed on that kind of paper. If the paper in this case should be classified as printing paper suitable for books, there is no reason why blotting paper should not be classified in the same way.

Provision for paper suitable for the printing of books was first made in the tariff law of 1890 and has been continued in every act

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since that year. The testimony of the examiners produced by the Government shows that from 1890 down to the date of the filing of the protest in this case paper such as that imported was never once assessed as printing paper suitable for books, which would seem to be confirmatory of the fact that the paper was never recognized by publishers or printers or by importers or dealers in paper as a printing paper commercially adapted to that use.

When Congress fixed a duty on printing paper suitable for books we can not believe that it contemplated the classification of any paper which might be printed upon as printing paper, or that the possible, rare, or exceptional use of a paper for the printing of books would be enough to determine its suitability for that purpose.

The decision of the Board of General Appraisers is *affirmed.*

(T. D. 31948.)

Pony skins.

REVILLON FRÈRES *v.* UNITED STATES (No. 461).

PONY SKINS, DRESSED FURS ON THE SKIN.

Pony skins are not "furs" or "fur skins" in the common, ordinary meaning of those words, but the evidence seems to make it clear that for several years before the enactment of the tariff law of 1909 pony skins had been dealt in commercially precisely as true fur skins and employed as such in manufacture; they are dutiable as dressed fur skins under paragraph 439, tariff act of 1909.—United States *v.* Bennett (66 Fed. Rep., 299).

United States Court of Customs Appeals, October 12, 1911.

APPEAL from Board of United States General Appraisers G. A. 7079 (T. D. 30798).

[Decision affirmed.]

B. A. Levett for appellants.

D. Frank Lloyd, Assistant Attorney General (*Charles D. Lawrence* on the brief), for the United States.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

SMITH, Judge, delivered the opinion of the court:

This case raised the question as to the proper classification of certain "pony skins" imported into the country at the port of New York and assessed for duty by the collector as "dressed furs on the skin," at 20 per cent ad valorem under the provisions of paragraph 439 of the tariff act of August 5, 1909, which reads as follows:

439. Furs dressed on the skin, not advanced further than dyeing, but not repaired, twenty per centum ad valorem; manufactures of furs, further advanced than dressing and dyeing, when prepared for use as material, including plates, linings, and crosses, thirty-five per centum ad valorem; articles of wearing apparel of every description, partly or wholly manufactured, composed of or of which fur is the component material of chief value, fifty per centum ad valorem. Furs not on the skin, prepared for hatters' use, including fur skins carroted, twenty per centum ad valorem.

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The importers protested that the goods were either dutiable at 15 per cent ad valorem under paragraph 451 or free of duty under paragraph 676, the pertinent provisions of which paragraphs are as follows:

451. * * * Kangaroo, sheep, and goat skins (including lamb and kid skins) dressed and finished, other skins and bookbinders' calfskins, all the foregoing not specifically provided for in this section, fifteen per centum ad valorem; * * *.

Free list.—That on and after the day following the passage of this act, except as otherwise specially provided for in this act, the articles mentioned in the following paragraphs shall, when imported into the United States * * * be exempt from duty:

* * * * * * *

676. Skins of all kinds, raw (except sheepskins with the wool on), and hides not specially provided for in this section.

The debatable issue raised by the classification of the collector and the protest of the importer is whether the pony skins so imported are furs or fur skins in fact, and if not, whether, by commercial usage and custom at and prior to the tariff act of August 5, 1909, they had come to be so regarded, treated, and understood by the trade.

The Board of General Appraisers overruled the protest, and the importers appealed.

Counsel for the appellants contend that the goods are not furs or fur skins within the ordinary meaning of those words or as known to the trade, and that therefore they should be assessed for duty as "other skins" under paragraph 451 or admitted free as "hides not specially provided for" under paragraph 676.

As defined by the standard authorities, "fur" is the short, soft, fine, curly, silky, or downy hair which covers the skin of certain animals and is protected by a straight, smooth, comparatively rigid hair intermingled with it. (Standard Dictionary; Encyclopedia Britannica, 11th ed., Vol. XI.)

The evidence shows that the pony skins are covered with the latter class of hair only, and therefore they are not "furs" or "fur skins," giving to those words their common, ordinary meaning. Whether the merchandise can be classified as "furs" or "fur skins" would seem to depend consequently on whether trade usage and custom has given to the word "fur" a broader signification than that popularly accorded to it and, failing that, on the applicability of the similitude clause.

The case appears to have been tried to some extent on the theory that the commercial meaning of "dressed furs" and of "furs dressed on the skin," and not that of "furs" or "fur skins," was the question to be solved, and as a result there were differences in statement which seemingly left several of the witnesses at variance with themselves and one another. Quite naturally most, if not all, of the

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witnesses, both for the Government and for the importers, testified that pony skins were not ordered, bought, and sold as "dressed furs" or as "furs dressed on the skin." At the same time it was made perfectly clear by the testimony that no skins, whether true furs or not, were so ordered, bought, or sold. Such expressions are too indefinite for commercial transactions, and necessarily more specific language must be used by buyer and seller if the one is to understand and the other to secure what is wanted.

It seems to be established by witnesses for the Government and the importers that when fur skins, dressed fur skins, or dressed furs are referred to in the trade they are generally spoken of as "skins," or "dressed skins," which terms are considered and understood by the trade as synonymous with the longer expressions. Consequently, when ordering, buying, or selling the skins of the otter, beaver, or muskrat, which are true fur-bearing animals, they are not ordered, bought, or sold as "fur skins" or "dressed furs" or "furs dressed on the skin," or as otter, beaver, or muskrat fur skins, or as otter, beaver, or muskrat fur skins dressed, but as otter, beaver, or muskrat "skins," natural or dressed as the case may demand. Ellipsis is as much in use in the business as in the literary world, and whether an order is given for "skins" or "fur skins," "dressed skins," or "dressed fur skins," the meaning is just the same to a trade which requires for its uses only "skins" which serve the purposes of fur skins.

A careful analysis of all the testimony leaves no doubt in our minds that for the six or seven years immediately prior to the tariff act of August 5, 1909, pony skins of the class of the importation here under consideration were uniformly bought and sold in precisely the same way as were true fur skins. They were then and are now imported into the country by importers of furs, bought and sold by furriers, dressed and dyed by dressers and dyers of furs, and made up into fur garments by manufacturers of fur wearing apparel. They were then and are now definitely, uniformly, generally, and not personally, partially, or locally, treated and used by the fur trade as a fur. In the light of these facts, which we consider clearly proved by the evidence, we see no escape from the conclusion that this case is on "all fours" with United States *v.* Bennett (66 Fed. Rep., 299) and that at and prior to the passage of the tariff act of August 5, 1909, trade usage and custom had so far crystallized as to give to the term "fur skins" a definite, uniform, and general signification broader than its ordinary meaning and sufficiently comprehensive to embrace the pony skins in question.

As we are of opinion that pony skins are fur skins within the provisions of paragraph 439, the claim that they are entitled to free entry as "hides not specially provided for" can not be sustained.

The decision of the Board of General Appraisers is *affirmed.*

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(T. D. 31949.)

Perborate of sodium.

MORGENSTERN & CO. *v.* UNITED STATES (No. 481).

PERBORATE OF SODIUM, A CHEMICAL COMPOUND.

Under neither the tariff act of 1897 nor the tariff act of 1909 may perborate of sodium be classed as borate material. It is the product of a chemical reaction, is a chemical compound, and dutiable as such under paragraph 3 of each of said acts.

United States Court of Customs Appeals, October 12, 1911.

APPEAL from Board of United States General Appraisers, Abstract 23840 (T. D. 30865).

[Decision affirmed.]

Comstock & Washburn (*Albert H. Washburn* of counsel) for appellants.

D. Frank Lloyd, Assistant Attorney General (*Charles E. McNabb* on the brief), for the United States.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

SMITH, Judge, delivered the opinion of the court:

The merchandise involved in this case is perborate of sodium imported under the tariff acts of 1897 and 1909. This perborate was classified by the collector of customs as a chemical compound not specially provided for and that part of it which was imported under the tariff act of 1897 was assessed for duty under the following paragraph thereof:

3. Alkalies, alkaloids, distilled oils, essential oils, expressed oils, rendered oils, and all combinations of the foregoing, and all *chemical compounds* and salts not specially provided for in this act, *twenty-five per centum ad valorem.*

The perborate which was imported under the tariff act of 1909 was assessed for duty under paragraph 3 thereof, which is as follows:

3. Alkalies, alkaloids, distilled oils, essential oils, expressed oils, rendered oils, and all combinations of the foregoing, and all *chemical compounds*, mixtures and salts, and all greases, not specially provided for in this section, *twenty-five per centum ad valorem;* chemical compounds, mixtures and salts containing alcohol or in the preparation of which alcohol is used, and not specially provided for in this section, fifty-five cents per pound, but in no case shall any of the foregoing pay less than twenty-five per centum ad valorem.

The importers protested that all of the merchandise whether imported under the tariff act of 1897 or under that of 1909 was dutiable as a borate material under the following paragraphs of said acts:

Act of 1897:

11. Borax, five cents per pound; borates of lime or soda, or other borate material not otherwise provided for, containing more than thirty-six per centum of anhydrous boracic acid, four cents per pound; borates of lime or soda, or *other borate material not otherwise provided for, containing not more than thirty-six per centum of anhydrous boracic acid, three cents per pound.*

Act of 1909:

11. Borax, two cents per pound; borates of lime, soda, or *other borate material not otherwise provided for in this section*, two cents per pound.

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The Board of General Appraisers overruled the protests and the importers appealed. The evidence shows that perborate of sodium is a comparatively recent creation of the chemical laboratory and that it is not found in a state of nature. It is manufactured by bringing together borate of sodium and peroxide of hydrogen in such a way that a chemical reaction is caused, as a result of which perborate of sodium is produced. There are some differences between the witnesses as to the chemical formula of borate of soda, and none of them is wholly sustained by chemical treatises on the subject. The testimony, however, is uncontradicted that perborate of sodium contains one atom more of oxygen than does the borate and that chemically speaking they are different articles. From this evidence the conclusion must be drawn that the perborate of sodium is not borate of soda, and that as it is the product of a true chemical reaction artificially produced, it is a chemical compound.

Counsel for the importers contend, however, that the merchandise in question is a *borate material,* and that as the provision for borate material in paragraph 11 of both acts is narrower and more specific than that for chemical compounds in paragraph 3 it should be classified under the former paragraph instead of the latter. We can not wholly agree with this contention. The expression "borates of lime and soda, or other borate material" in paragraph 11 of the tariff act of 1897 and the expression "borates of lime, soda, or other borate material" in paragraph 11 of the tariff act of 1909 were, in our opinion, intended to cover only those borate materials which are found in nature and were not meant to embrace borates artificially produced. The borate of lime and borate of soda referred to in these paragraphs as borate materials are crude, natural products, from which it is commercially practicable to manufacture borax, boracic acid, and chemically prepared borates, and the phrase "other borate material" must on the principle of *noscitur a sociis* be held to refer to like natural substances. Hempstead *v.* Thomas (129 Fed. Rep., 907). Counsel takes exception to the Hempstead case as authority and argues that as there are in nature no borate materials which contain more than 36 per cent of anhydrous boracic acid the interpretation there given to paragraph 11 of the tariff act of 1897 would render inoperative and of no effect that part of it which imposes a duty on borate materials containing more than 36 per cent of anhydrous boracic acid. In answer to this objection to the authority of the Hempstead case it might be sufficient to say that a reference to scientific works other than those mentioned by the witnesses shows that sassoline, a native boric acid found in the hot springs of Sasso, Tuscany, contains 56.45 per cent of anhydrous boric or boracic acid. (Wagner's Chemical Technology, p. 427.)

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From this work and Spon's Encyclopedia it also appears that very high percentages of boracic acid are found in other natural products, such as tincal or crude borax, which contains 36.53 per cent; rhodicite, which contains from 30 to 45 per cent; boracite or magnesium borate and chlorate, which contains 62.5 per cent; hayescine, tiza, or calcium borate, which contains from 30 to 44 per cent. (Wagner's Chemical Technology, p. 427; Spon's Encyclopedia, vol. 1, pp. 526–527.) Possibly a percentage of more than 36 per cent of anhydrous boracic acid in native borates is confined to sassoline or is so exceptional that the difference between scientific authorities may be accounted for by the rarity of its occurrence. But however that may be, the very fact that more than 36 per cent of anhydrous boracic acid is claimed for such a large source of supply as the springs of Sasso, the uncertainty as to whether as large a percentage might not be found in other natural substances, and the existence of a difference of opinion as to maximum percentages contained in native materials, were ample justification for the distinction made by Congress in a protective tariff between borates containing more and borates containing less than 36 per cent of anhydrous boracic acid, and from that distinction it can not be logically deduced that the provision was intended to cover both manufactured and native borates. That Congress regarded or could have regarded manufactured borates as borate material, that is, a material for the making of borates, does not seem to us probable or reasonable in view of the fact that such a use of manufactured borates was commercially impracticable. Manufactured borates are made by combining boracic acid with a metal base, and as boracic acid is derived from natural substances it seems to follow that the cost of production alone would absolutely preclude the commercial manufacture of borates from borates artificially evolved. The use of manufactured borates to make other borates necessarily implies the development of boracic acid from native products, its combination with some metal, and then its redevelopment in order to combine it with another. On its face such a method of making borates is needlessly costly and too circuitous for practical commercial use. We can not, therefore, assume or presume that the legislature ever intended that the term "borate material" should cover or include manufactured borates.

But whether the expression "other borate material" refers exclusively to natural products or includes both native and artificial borates, we think that perborate of sodium can not be regarded as a material on the evidence presented in the record. A material is not merely a substance—an article—but a substance, matter, article, or thing from which some other substance, matter, article, or thing is to be produced, manufactured, constructed, or made. Perborate

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of sodium is manufactured for use in laundries as a cleansing agent, for bleaching, and for antiseptic and other medical purposes. It is itself a finished manufactured product evolved from borate materials, and, so far as the evidence discloses, it is not intended nor is it commercially available as a material for the manufacture of borates, or of anything else for that matter.

The decision of the Board of General Appraisers is *affirmed.*

(T. D. 31950.)

Figured cotton cloth.

QUAINTANCE *v.* UNITED STATES (No. 497).

1. FIGURED COTTON CLOTH APPRAISED AS AN ENTIRETY.

In appraising the value of figured cotton cloth, the threads added to constitute the figure are not to be omitted in the valuation, but these, together with the foundation threads, are to be taken into account in fixing ad valorem rates under paragraphs 305 and 306, tariff act of 1897.

2. SECTION 19, CUSTOMS ADMINISTRATIVE ACT OF 1890.

Section 19, customs administrative act, 1890, providing in effect that imported merchandise subject to an ad valorem duty shall be valued in the condition in which it is imported, requires that the value of the added threads should be computed.

United States Court of Customs Appeals, October 12, 1911.

APPEAL from Board of United States General Appraisers, G. A. 7105 (T. D. 30968).

[Decision affirmed.]

Comstock & Washburn (*Albert H. Washburn* and *George J. Puckhafer* of counsel) for appellant.

D. Frank Lloyd, Assistant Attorney General (*Thomas J. Doherty* on the brief), for the United States.

Before MONTGOMERY, SMITH, BARBER, and DE VRIES, Judges.

BARBER, Judge, delivered the opinion of the court:

Certain figured cotton cloth containing other than ordinary warp and filling threads was assessed for duty at 25 per cent, 30 per cent, and 35 per cent ad valorem according to its value under the provisions of paragraphs 305 and 306 of the tariff act of July 24, 1897, and in addition 2 cents per square yard under the provisions of paragraph 313 of the same act.

Paragraphs 305 and 306 being typical of each other, one only is inserted here.

306. Cotton cloth, not bleached, dyed, colored, stained, painted, or printed, exceeding one hundred and not exceeding one hundred and fifty threads to the square inch, counting the warp and filling, and not exceeding four square yards to the pound, one and one-half cents per square yard; exceeding four and not exceeding six square yards to the pound, two cents per square yard; exceeding six and not exceeding eight square yards to the pound, two and one-half cents per square yard; exceeding eight square yards to the pound, two and three-fourths cents per square yard; if bleached, and not exceeding four square yards to the pound, two and one-half cents per square

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yard; exceeding four and not exceeding six square yards to the pound, three cents per square yard; exceeding six and not exceeding eight square yards to the pound, three and one-half cents per square yard; exceeding eight square yards to the pound, three and three-fourths cents per square yard; if dyed, colored, stained, painted, or printed, and not exceeding four square yards to the pound, three and one-half cents per square yard; exceeding four and not exceeding six square yards to the pound, three and three-fourths cents per square yard; exceeding six and not exceeding eight square yards to the pound, four and one-fourth cents per square yard; exceeding eight square yards to the pound, four and one-half cents per square yard: *Provided*, That on all cotton cloth exceeding one hundred and not exceeding one hundred and fifty threads to the square inch, counting the warp and filling, not bleached, dyed, colored, stained, painted, or printed, valued at over nine cents per square yard, thirty per centum ad valorem; bleached, valued at over eleven cents per square yard, thirty-five per centum ad valorem; dyed, colored, stained, painted, or printed, valued at over twelve and one-half cents per square yard, there shall be levied, collected, and paid a duty of thirty-five per centum ad valorem.

The construction thereof also being involved in the determination of this appeal, paragraphs 310 and 313 are inserted.

310. The term cotton cloth, or cloth, wherever used in the paragraphs of this schedule, unless otherwise specially provided for, shall be held to include all woven fabrics of cotton in the piece or otherwise, whether figured, fancy, or plain, the warp and filling threads of which can be counted by unraveling or other practicable means.

313. Cotton cloth in which other than the ordinary warp and filling threads have been introduced in the process of weaving to form a figure, whether known as lappets or otherwise, and whether unbleached, bleached, dyed, colored, stained, painted, or printed, shall pay, in addition to the duty herein provided for other cotton cloth of the same description, or condition, weight, and count of threads to the square inch, one cent per square yard if valued at not more than seven cents per square yard, and two cents per square yard if valued at more than seven cents per square yard.

The appellant contends that, in order to determine the value of the cloth in question for the purpose of ascertaining whether or not the value will bring it within the terms of the ad valorem provisos in paragraphs 305 and 306, the collector should take the value only of what is termed the foundation fabric of the cloth, which means the cloth as it would be if it did not contain other than the ordinary warp and filling threads and the figures or designs produced thereby; or, in other words, that for the purpose of ascertaining whether the ad valorem provisos of paragraph 305 or 306 apply to cotton cloth containing other than the ordinary warp and filling threads, the value of the foundation fabric only shall be considered. This contention involves the collateral one that, when the ascertained value of such foundation fabric is less than the minimum value named in the provisos, duty should be taken only at the specific rates named in the body of paragraph 305 or 306 plus the additional duty applicable under paragraph 313, and also that, in the event the value of the foundation fabric carries it into the proviso of either of the paragraphs, the ad valorem rates therein named should be taken only on the value of the foundation fabric and not on the value of the cloth as imported, entered, and appraised.

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The contention of the Government is that the foreign market value of the cloth at the time of its importation in its condition as imported is to be the guide in determining whether a specific or an ad valorem rate of duty shall be assessed under paragraphs 305 and 306 and that, if ad valorem, the rate thereof shall be applied to such foreign market value to which specific or ad valorem rates, as the case may be, the applicable extra duty under paragraph 313 shall be added.

The assessment in this case was made by the collector consistent with the Government's claim and his action was sustained by the Board of General Appraisers.

The determination of this question involves an examination of paragraph 313, especially of the words "cotton cloth * * * shall pay in addition to the duty herein provided for other cotton cloth of the same description or condition, weight, and count of threads to the square inch, 1 cent per yard if valued at not more than 7 cents per square yard, and 2 cents per square yard if valued at more than 7 cents per square yard."

It is manifest, when cotton cloth is subject to the provisions of paragraph 313, as is conceded to be the case here, that other paragraphs must be referred to in order to ascertain the initial duty; that is, "the duty herein provided for other cotton cloth of the same description, or condition, weight, and count of threads to the square inch," in addition to which paragraph 313 imposes a duty of 1 cent per square yard if the cloth is valued at no more than 7 cents per square yard and 2 cents per square yard if valued at more than 7 cents per square yard.

The paragraphs to be referred to for that purpose in this case are paragraphs 305 and 306, which are known as countable paragraphs of the cotton schedule. As the same observations apply to each, paragraph 306 only will be referred to.

The main body of this paragraph shows that the elements for determining specific duty rates thereunder of cotton cloth which would be cotton cloth as defined in paragraph 310 are, count of threads to the square inch, conditions as to bleaching, dyeing, etc., and weight per square yard, while, under the proviso thereto, such cloth of a certain count of warp and filling threads per square inch and valued at certain varying amounts per square yard is made subject to certain ad valorem duties depending upon whether the cloth is or is not bleached or dyed, colored, stained, painted, or printed, as the case may be.

Now, the real question here is whether the collector, when he valued the cotton cloth in this case, had a right to take the value of the cloth just as he found it, in the condition in which it was imported, or whether it was his duty to consider the cloth as consisting of two parts, one part the foundation fabric and the other part the other

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than the ordinary warp and filling threads found in or on the foundation fabric, which were concededly introduced to form a figure or design—that is, analyzed still further, should he, for the purposes of ascertaining the value of this cotton cloth, theoretically divide it into two parts, taking the value of only one of them for the purpose of ascertaining the ad valorem duty to which the cloth should be subject, notwithstanding the cloth was made, imported, and designed to be sold as an entirety.

Appellant urges, as one reason why the value only of the foundation fabric should be taken into consideration in determining what rate of duty should apply under paragraph 306, that it has been held, that for the purpose of ascertaining the number of warp and woof threads to the square inch, such threads in the foundation fabric only must be counted, and we are cited to Hedden *v.* Robertson (151 U. S., 520) upon this point.

An examination of the opinion in that case discloses that the importation was cotton cloth, the groundwork of which was uniform and upon which were figures or patterns woven contemporaneously with the weaving of the fabric. Apparently it resembles the importations in this case. The importer there contended that the cotton cloth was dutiable as a manufacture of cotton and not as cotton cloth. The Supreme Court held that the merchandise was dutiable as cotton cloth under the appropriate countable paragraph of the cotton schedule, saying in effect that, the warp and woof threads of such groundwork being countable, the goods were dutiable as cotton cloth by the express language of the statute. In other words, it decided that the extraordinary threads which made the superimposed figures or patterns upon the cloth should not be counted in determining the number of warp and filling threads to the square inch.

It is further urged that in United States *v.* Rusch (167 Fed. Rep., 523), it was held by the Circuit Court of Appeals that upon the question of condition of cotton cloth, that is, as to whether colored or not, only the warp and woof threads of the foundation fabric should be considered. In that case the warp and woof threads of the foundation fabric were uncolored, but other than ordinary warp and woof threads had been used to embellish the cloth, of such a color and to such an extent that in some instances the finished fabric appeared to the eye to be colored, with white ornamentations.

The court held that in determining whether the cloth was unbleached, bleached, colored, stained, painted, or printed, regard only should be had to the foundation fabric. It was conceded and held that if any threads of the warp and filling of the foundation fabric were colored the classification would thereby be changed.

The Supreme Court denied a petition for a writ of certiorari in this case. United States *v.* Rusch (214 U. S., 525).

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It is claimed that inasmuch as these cases settle the law that for count of threads and for determination of color of cotton cloth which is subject to paragraph 306 and also to the additional duty provided in paragraph 313, reference can only be had to the foundation fabric, it logically follows that in order to ascertain the *value* of such cotton cloth resort should also be had only to such foundation fabric.

This leads to a consideration of what Congress intended by the enactment of paragraph 313, which first appears in the tariff act of 1897. It was manifestly intended to subject to an additional duty the cloth therein described, which was new to the trade and was the result of the use of improved mechanical appliances in its production. It was apparently thought that the countable paragraphs did not impose a sufficient rate of duty thereon, and so the additional rate of 1 or 2 cents per square yard, as the case might be, was provided for.

The evident intent of Congress in dealing with the subject of cotton cloth is to increase the amount of the tax thereon as the cloth becomes more expensive, and paragraph 313 was plainly enacted to further that intent. This can best be accomplished by making the value of the cotton cloth one of the factors to determine the assessment of duty.

And now comes the crux of the case—shall it be the value of the foundation fabric or of the finished cloth. The importer says the former because two factors, namely, count of threads and condition of color, are to be determined in that manner. If by so doing the manifest purpose of paragraph 313 can be carried out, it would seem to be the proper course to pursue. We proceed to test his claim in that regard. Assume a certain foundation fabric, a plain cloth, exceeding 100 and not exceeding 150 threads to the square inch, the warp and filling threads of which are not bleached, dyed, colored, stained, painted, or printed, is valued at 10 cents per square yard under paragraph 306. It is then subject to a duty under that paragraph of 30 per cent ad valorem. Suppose the same foundation fabric be so manufactured that under paragraph 313 it is worth in its various conditions, one product 12 cents, another 14 cents, another 16 cents, another 18 cents, and another 20 cents per square yard. Applying the rule the importer contends for, we have the following results: The plain cloth pays a duty of 3 cents per square yard; when ornamented so as to be worth 12 cents per square yard, applying paragraph 313, it pays a duty of 5 cents per square yard, and this duty is not increased, although the ornamented fabric be worth 20 cents per square yard. If the value of the cotton cloth and not the foundation fabric be taken as the factor, the results would be as follows: Plain cloth, 3 cents per square yard; figured cloth, valued at 12 cents per square yard, 5.6 cents duty per square yard; valued at 14 cents, duty 6.2 cents; valued at 16 cents, duty 6.8

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cents; valued at 18 cents, duty 7.4 cents; valued at 20 cents, duty 8 cents. In other words, a rate of duty increasing as the value of the cotton cloth itself increases by the common difference of 30 per cent of the difference in value.

Other illustrations readily suggest themselves applicable to the various features of the case, any of which we think demonstrates that the rule for which the importer contends defeats the very purpose of the paragraph. The reason is that the value which he contends should be the factor is in each given case constant and does not vary as the value of the cotton cloth itself varies.

The case of the United States *v.* Riggs (203 U. S., 136) is cited by the Government as conclusive of the case in its favor. We think it can hardly be said to be so, as the question involved was whether the additional duty imposed under paragraph 313 could be added to the ad valorem tax imposed under paragraph 306 or whether it should be restricted to the specific tax imposed thereby. The court held it should be added to either, as the case might require.

An examination of the decision of the board and of all the cases through which that case passed in reaching the Supreme Court, including the opinion there, suggests that the value upon which the duty was assessed was that of the figured cotton cloth as imported and not of the foundation fabric, but this, however, is not entirely clear. The court did, however, clearly hold that the object of paragraph 313 was to aid in the general scheme of the tariff act of raising the amount of tax as the cloth becomes more expensive, and that the paragraph was "intended to hit all cotton cloth and all values and is intended to be added to a tax already imposed."

Section 19 of the customs administrative act of June 10, 1890, provides in effect that imported merchandise subject to an ad valorem rate of duty shall be valued in the condition in which it is imported, and so far as applicable here seems to require the conclusion which we reach.

Under the countable paragraphs, it is the duty of the collector to value the cotton cloth in question. He may count the threads of the foundation fabric for the purpose of ascertaining under which paragraph the importation falls in that regard; he may apply the other tests prescribed in the countable paragraph in order to determine its classification thereunder and the consequent rate of duty; but when he undertakes to ascertain and determine the value, we think it is clear that but one course is left open to him—that is, to find its value in the condition in which it is imported as an entirety.

As applicable to importations of other merchandise, this is but a reiteration of what this court has already held. Moore *v.* United States (1 Ct. Cust. Appls., 115); United States *v.* Vietor (1 Ct. Cust. Appls., 297).

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Only in this way can the purpose of Congress be carried out and a tax imposed on cotton cloth that will increase as the cloth itself becomes more expensive.

The decision of the board is *affirmed*.

(T. D. 31951.)

Flexible tubing.

HENSEL *v.* UNITED STATES (No. 529).

SEAMLESS FLEXIBLE COPPER TUBING.

Generally speaking, "pipe" implies an article tubular in form and rigid, while "tubing" implies an article that is flexible. Paragraph 151, tariff act of 1909, provides in precise language for flexible metal tubing or hose, and this being a more specific, definite enumeration than "copper pipes," the importation was dutiable not under paragraph 176 of that act, but under paragraph 151.

United States Court of Customs Appeals, October 12, 1911.

APPEAL from Board of United States General Appraisers, Abstract 24104 (T. D. 31020).

[Decision affirmed.]

John Giblon Duffy (*Joseph G. Kammerlohr* of counsel) for appellants.

D. Frank Lloyd, Assistant Attorney General (*Thomas J. Doherty* on the brief), for the United States.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

SMITH, Judge, delivered the opinion of the court:

A consignment of seamless flexible copper tubing or hose imported at the port of New York was assessed for duty by the collector of customs at 30 per cent ad valorem under the provisions of paragraph 151 of the tariff act of August 5, 1909. The following is the part of the paragraph which is material to the case:

151. * * * Flexible metal tubing or hose, not specially provided for in this section, whether covered with wire or other material, or otherwise, including any appliances or attachments affixed thereto, thirty per centum ad valorem; * * *

The importers protested against the assessment in due time and form, and among other grounds of protest, which it is unnecessary to consider, set up that the merchandise was dutiable at 2 cents per pound under paragraph 176, which reads as follows:

176. Copper, in rolled plates, called braziers' copper, sheets, rods, pipes, and copper bottoms, two and one-half cents per pound; sheathing or yellow metal of which copper is the component material of chief value, and not composed wholly or in part of iron ungalvanized, two cents per pound.

The Board of General Appraisers overruled the protest and the importers appealed.

The collector found and the appraiser reported that the merchandise was seamless flexible metal hose or tubing. No evidence to the con-

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trary was introduced on the hearing. The board finds and counsel for the importers admit that the goods are flexible copper tubing or hose. On this state of the record there is but one point presented for decision, Is flexible copper tubing or hose provided for in any paragraph or section of the tariff act other than paragraph 151? Counsel for the importers contend that flexible copper tubing or hose is specially provided for in paragraph 176. We think this contention can not be sustained, even if it be assumed that a proper basis for it was laid in the protest. Paragraph 176 fixes a duty of 2½ cents per pound on copper pipes, not on copper tubing, and much less on flexible copper tubing or hose. While the words "pipe" and "tube" are frequently used interchangeably, there is, after all, a distinction between them. Generally speaking, pipe implies an article of tubular form which is rigid and tubing an article which is flexible. (Standard Dictionary.) However, section 151, in precise language, provides for flexible metal tubing or hose, and we must consider this a more specific and definite enumeration of the article imported than one for "copper pipes."

The decision of the Board of General Appraisers is *affirmed.*

(T. D. 31952.)

Cotton waste.

SIMPSON *v.* UNITED STATES (No. 530). VANDEGRIFT *v.* UNITED STATES (No. 531).

COTTON WASTE, NOT ADVANCED IN VALUE.

Cotton waste recovered from mill sweepings or used cotton waste is not "advanced in value" by processes of combing, washing, and bleaching in the sense implied by "advanced in value" appearing in section 313, tariff act of 1909. It is entitled to free entry under that act.

United States Court of Customs Appeals, October 12, 1911.

APPEAL from Board of United States General Appraisers, G. A. 7111 (T. D. 31001).

[Decision reversed.]

Comstock & Washburn (*Albert H. Washburn* and *J. Stuart Tompkins* of counsel) for appellants.

D. Frank Lloyd, Assistant Attorney General (*Martin T. Baldwin* on the brief), for the United States.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

SMITH, Judge, delivered the opinion of the court:

Certain cotton waste imported at Philadelphia was classified by the collector of customs as cotton waste advanced in value and assessed for duty at 20 per cent ad valorem under the provisions of paragraph 313 of the tariff act of August 5, 1909, the part of which material to the case is as follows:

313. * * * *Cotton waste* and flocks manufactured or otherwise *advanced in value*, twenty per centum ad valorem.

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The importers protested that the merchandise was not cotton waste advanced in value, but that it was cotton waste entitled to free entry under paragraph 548 of the free list, which paragraph is as follows:

548. Cotton, and cotton waste or flocks.

The Board of General Appraisers sustained the protest as to 10 bales of the importation described as "pulled waste" and overruled it as to that part denominated "washed or bleached waste." From the decision, in so far as it overruled the protest, the importers appealed. No appeal was taken by the Government from that part of the decision sustaining the protest as to 10 bales of pulled waste.

The facts in the case are practically undisputed and are about as follows: The goods in question are the product either of cotton waste which has been used for cleaning machinery or of the mill sweepings of cotton mills or of a mixture of both. The cotton waste which has been used to clean machinery is of course impregnated with oil and dirt and thereby has lost its usefulness to the consumer as a cotton waste. The mill sweepings are made up of soiled cotton waste and of dirt, bits of leather, and other refuse swept up from the floors of the mills. Neither mill sweepings nor used cotton waste would be accepted as a good delivery of the lowest grade of cotton waste. The payment of freight on a high percentage of unserviceable material and the inflammable nature of oil-soaked cotton practically precludes the importation into this country of used cotton waste or of mill sweepings. The mill sweepings and used cotton waste are in fact a spoiled cotton waste and have no value in their foul condition either to the consumer or the manufacturer of cotton waste. Mill sweepings and used cotton waste are not thrown away, however, as worthless refuse, but are sold to those who make a business of bringing such materials to some degree of usefulness as cotton waste by separating the cotton fiber therein from its impurities. This is accomplished by putting the material through a machine which combs out the dirt and all other foreign matter, with the exception of the oil and grease absorbed by the fiber. The oil and grease, if any there be, are then eliminated by washing the cotton with water and acids. Although this washing bleaches the material to some extent, it is fairly evident that the primary purpose of the washing is not to bleach but to cleanse, and that whatever of bleaching results from the use of acid to remove grease and oil is more than counterbalanced by injury done to the fiber. If the product is cleaned solely by combing out the dirt it is "pulled waste." If it is cleaned by washing it is called "washed waste." From mill sweepings about 50 per cent of available material can be recovered; that is to say, 10,000 pounds of mill sweepings will produce about 5,000 pounds of pulled waste which, if it contains oil or grease, must be

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further treated by washing with water and acid before it reaches the stage of a very low grade of cotton waste.

The cotton waste which is recovered by these processes is not and could not be sold to the consumer as a cotton waste, but is mixed by the manufacturer with 75 per cent of No. 1 white waste. The cost of No. 1 white waste to the manufacturer is from 6 to 9 cents per pound, and as he receives for the finished product not more than from 8½ to 9 cents per pound, the adulterant may be said to represent his margin of profit. Used cotton waste and mill sweepings are bought and sold in Europe at prices which run from five-eighths of 1 cent per pound to 1½ cents per pound. The average price of "pulled waste" and "washed waste" in the same market averages about 3¾ cents per pound.

As popularly understood, cotton waste is that refuse of cotton manufacture which is used to clean machinery and as packing for axle boxes (Standard Dictionary; Century Dictionary), and so far as the evidence discloses that same understanding of the term attaches to it in the trade. Manifestly, and as appears from the record, mill sweepings and used cotton waste are not fit to clean machinery or pack axle boxes. With these as the facts in the case we do not see how it is possible to escape the following conclusions:

First. That mill sweepings and used cotton waste are not cotton waste within the trade or popular understanding of that term, and that the cotton fiber which is a constituent part of such sweepings and used cotton waste ceased to be cotton waste when it became so contaminated with dirt, grease, oil, and other foreign matter that it was no longer serviceable or marketable as cotton waste.

Second, that mill sweepings and used cotton waste are nothing more than the crude materials from which a cotton waste may be reclaimed or recovered.

Third, that the cotton waste so reclaimed or recovered is at best one of the lowest grades of cotton waste and is of such an inferior quality that it is not salable to the consumer, but is serviceable only to the manufacturer of cotton waste, who mixes it with No. 1 cotton waste and utilizes it as an adulterant to reduce the cost of making merchantable cotton waste.

Fourth, that while mill sweepings and used cotton waste have been advanced in condition by converting them into a cotton waste of low grade, the cotton waste so evolved has not itself been advanced in condition or subjected to further treatment or processing to advance its value.

It appearing to our satisfaction that the cotton waste under discussion is a reclaimed or recovered cotton waste of low grade; that it has not been restored to its natural state, much less advanced beyond that condition; that it was not manufactured or advanced

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in value after its restoration to the status of a cotton waste; and that it is inferior to the normal cotton waste, which, although worth nearly twice as much, is admitted free of duty, we must decide that the importation is entitled to free entry. To hold otherwise would mean that a cotton waste just as it falls from the mill must be admitted free and that an inferior cotton waste recovered from the same material after it has become refuse by use or otherwise can not be so admitted, which would be an anomaly the introduction of which into the tariff law of 1909 we can not assume was the real intention of Congress.

The decision of the Board of General Appraisers is *reversed.*

(T. D. 31953.)

Cardboard.

UNITED STATES *v.* MEYERSON (No. 547).

CARDBOARD EMBOSSED TO IMITATE LEATHER.

Plain cardboard that has been embossed to give it an appearance of grain leather by passing it between a smooth and an indented roller remains cardboard; and it is not dutiable as paper, but as cardboard, under paragraph 415, tariff act of 1909.

United States Court of Customs Appeals, October 12, 1911.

APPEAL from Board of United States General Appraisers, G. A. 7078 (T. D. 30826).

[Decision affirmed.]

D. Frank Lloyd, Assistant Attorney General (*Thomas J. Doherty* on the brief), for the United States.

Harvey T. Andrews for appellee.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

SMITH, Judge, delivered the opinion of the court:

Certain merchandise imported into the country at the port of New York was classified as uncoated paper with a surface design not produced by lithographic processes, and assessed for duty by the collector at 4½ cents per pound under the following provisions of paragraph 411 of the tariff act of August 5, 1909:

411. * * * Papers, including wrapping paper, with the surface decorated or covered with a design, fancy effect, pattern or character, whether produced in the pulp or otherwise, but not by lithographic process, four and one-half cents per pound; * * *.

Other merchandise of the very same kind, except that it lacked the surface design, was subjected to duty as *cardboard* at 35 per cent ad valorem under the provisions of paragraph 415.

To the classification and duty assessed the importer objected in due time and as reasons for his objection thereto set up in his protest that all of the merchandise was properly dutiable at 35 per cent ad

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valorem under paragraph 415 of said act, the part of which paragraph material to this case is as follows:

415. Jacquard designs on ruled paper, or cut on Jacquard cards, and parts of such designs, *cardboard* and bristol board, thirty-five per centum ad valorem; * * *.

The Board of General Appraisers sustained the protest and the Government appealed.

The goods were reported by the appraiser as follows:

(A) Plain paper boards intended to be used in the manufacture of suit cases, dutiable as cardboard at 35 per cent ad valorem under paragraph 415.

(B) Paper boards the same as A, except that they have an embossed design in imitation of the grain in leather, dutiable as paper with a surface design at 4½ cents per pound under paragraph 411.

From the uncontradicted evidence produced on the hearing the following facts appear to be established:

The goods are manufactured from paper pulp and belong to that class of manufactures from pulp known as cardboard. Cardboard is distinguished from paper as commonly understood in this, that it is thicker and heavier, stiffer and less flexible. Cardboard is not made on the usual paper machine, but on a special machine which winds up on a cylinder sufficient pulp or several layers of pulp to constitute the thickness required. It is not dried on the cylinders as is paper. Neither is it calendered in the same way. The board is taken from the cylinder wet and is dried in the air, which gives it a stiffness not possessed by paper. Moreover, as it can not be wound on the cylinder without splitting, it is calendered in sheets and not on the roll, as is paper. To make plain board the pulp is run through smooth rollers. Embossed board is produced by passing the pulp between a smooth roller and an indented roller. The testimony further discloses that cardboard is the generic name for paper boards and that in trade and commerce that term embraces the various boards, which, on account of their color and appearance and the pulp material of which they are made, have received such special names as wood board, strawboard, chip board, plain board, red fiber board, embossed-leather board, and so forth. As already stated, the plain board in this case was classified by the collector as *cardboard*, while the embossed board, composed of the same material, manufactured in the same way, intended for the same general uses, and differing in no way from the plain board, except that it had been given the appearance of grain leather with an indented roller, was classified as *paper*. Such a difference in classification may have been moved by considerations of the higher duty, but that classification can scarcely be said to be distinguished by its consistency.

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On this evidence and on the record submitted in T. D. 30826 the board found that the merchandise was "leather board," a special grade of paper board belonging to the general class of goods commercially known as cardboard, and that it was therefore dutiable at 35 per cent ad valorem under the provisions of paragraph 415. This finding is fully sustained by the evidence, and the decision of the Board of General Appraisers is therefore *affirmed*.

(T. D. 31954.)

Schappe silk yarn.

UNITED STATES *v.* BOUCHSEIN (No. 582).

SCHAPPE SILK YARNS, CONDITIONED.

The testimony shows such a general trade adoption of and acquiescence in the conditioning rule for finding the number to be assigned schappe silk yarns according to the metric system, that the reference to this system in paragraph 397, tariff act of 1909, may be fairly held to indicate this conditioning rule as a proper guide. This conditioning rule having been complied with in the case here, there is no error in the appraisement.

United States Court of Customs Appeals, October 12, 1911.

APPEAL from Board of United States General Appraisers, G. A. 7147 (T. D. 31181).

[Decision affirmed.]

D. Frank Lloyd, Assistant Attorney General (*Thomas J. Doherty* on the brief), for the United States.

Nathaniel Levy for appellee.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

MARTIN, Judge, delivered the opinion of the court:

Under the tariff act of 1909 the appellee imported into this country a consignment of schappe silk yarn. It is conceded that the merchandise was dutiable under paragraph 397 of that act.

The pertinent parts of the paragraph read as follows:

397. Spun silk or schappe silk yarn * * * if valued at exceeding one dollar per pound, in the gray, in skeins * * * if advanced beyond the condition of singles by grouping or twisting two or more yarns together, on all numbers up to and including number two hundred and five, fifty cents per pound, and in addition thereto ten one-hundredths of one cent per number per pound; exceeding number two hundred and five, fifty cents per pound, and in addition thereto fifteen one-hundredths of one cent per number per pound * * *. In assessing duty on all spun silk or schappe silk yarn, the number indicating the size of the yarn shall be taken according to the metric or French system, and shall, in all cases, refer to the size of the singles. * * *

The yarn in question is valued at over $1 a pound, is a two-ply yarn, in the gray, and in skeins.

As appears above, the rate of duty upon such an importation depends upon the number indicating the size of the yarn of which it is composed, and this number is to be taken according to the metric or French system and is to refer to the size of the singles.

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The yarn in question was described in the invoice as number 200 two ply, which was the number certified by the spinner. But after an examination and report by the appraiser, the collector classified the same as number 210 two ply, and assessed duty upon it accordingly.

The appellee protested against the ruling of the collector and contended that the yarn should be classified as No. 200 two ply, as invoiced. This protest was duly heard upon evidence by the Board of General Appraisers, and the protest was sustained. A rehearing was had upon the application of the Government, with additional evidence, and again the protest was sustained. The Government now prays for a reversal of that decision of the board.

As is above indicated, the contention between the parties relates entirely to the number which should be given the imported yarn according to the metric or French system, as prescribed by the paragraph.

The testimony shows that the method of finding the number of such yarn according to that system is as follows: A measured length of single yarn is reeled off and weighed, and this weight in grams is divided into the length in meters of the piece so weighed; the quotient thus obtained is the number sought. As appears from this statement, the greater the weight of the given piece the less will be the number and the lower the rate of duty under the provisions of the paragraph.

As has been stated, the duty upon such yarn is not assessed according to its weight alone, but also according to its number. This number, however, as has been explained, depends in part upon the weight of the piece of yarn which is selected as the sample for the computation. And the parties reach their point of difference in this case in coming to determine the method of ascertaining the weight of the selected measure of yarn.

The Government contends that the collector in taking the weight of this piece shall find its actual present weight in the condition of moisture in which it may happen to be when the calculation is made. The importer contends that the piece so weighed must first be "conditioned," and that its weight as taken by the conditioning process shall be accepted for the purpose of the calculation. The conditioning process is hereinafter explained. This defines the real issue between the parties in the case, namely, the different methods of ascertaining the weight of the given measure of yarn for the purpose of using it as a factor in the computation required by the metric system.

The testimony shows that the silk yarn in question naturally absorbs considerable moisture from the atmosphere, and the amount so absorbed changes, of course, according to the changing humidity of its surroundings. If the yarn is kept in a dry place it will lose

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moisture and weigh less, and if changed to a wet place it will absorb moisture and become heavier. It is said to be the custom to leave it for several days in cellars just before shipping it to this country, so that it may absorb moisture. This reduces the fuzz and makes the yarn smoother and sightlier. At the time of exportation it sometimes carries as much as 13 or 14 per cent of its gross weight in moisture. When fully dried out, it carries a much less percentage of moisture.

In the manufacture of schappe yarn, the spinner sets the draft of his machine so as to turn out a given size of yarn, and a certificate as to the number goes with the invoice of the goods. But such a certificate is often only approximately correct, and may not be accepted by all of the parties dealing with the merchandise. Thereupon the parties may be compelled to ascertain the correct size of the yarn by the metric system, and in order to do so they must first ascertain the weight of a given piece of the yarn as above explained. It is easy to see that in the case of yarn which may absorb 13 or 14 per cent or more of its own weight in moisture in wet surroundings, or retain less than half that much in dry surroundings, an element of considerable uncertainty is thereby introduced into such a calculation.

The testimony shows that this uncertainty was recognized many years ago by the silk trade as a disturbing factor entering into the sale and delivery of such yarns, and efforts were made to correct it. At first the yarn was weighed by hanging it in a room where the temperature and moisture were kept as nearly even as possible. But finally, it is said, the process of "conditioning" the yarn was adopted, first in Turin and afterwards in other places also. By this process a selected piece of the yarn is placed in an oven until all the moisture is expelled from it, then the weight of the dry piece is taken, and to this weight 11 per cent thereof is added as an allowance for normal moisture. The figure thus found is used as the divisor in the calculation above described. At first this fixed allowance was 10 per cent of the dry weight, but afterwards it was advanced to 11 per cent. The witnesses in the case sometimes speak of this allowance as an arbitrary one, but the word is incorrectly used by them in that application, for the figure was not arbitrarily selected, but was the result of general observation and experience and was accepted as a normal element in such a calculation; that is, long-continued observation convinced the trade that 11 per cent was the average percentage of moisture in schappe yarn under ordinary circumstances. And thereupon the trade, not universally but generally, adopted the rule that the yarn should be so conditioned for the purpose of calculating the number or size of the yarn in cases wherein the spinner's certificate was not accepted as final authority. The testimony shows that this rule was approved at a conference of the various silk associations held in Paris

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in 1900 and that this approval was received by the trade in general as an authority upon the subject. It is a fair conclusion from the testimony that after that time, if not before, this rule became in a general sense an implied term in contracts for the sale and delivery of schappe yarns unless negatived by some express or implied stipulation in the contract to the contrary. Many conditioning houses were established in Europe, although individual manufacturers often did their own conditioning by means of their own apparatus. Such houses dealt also with other silk products in addition to yarn, and much that has been said above would equally apply to such other products. It appears that at the time of the hearing before the board there was but one such establishment in New York, and that was the United States Silk Conditioning Co., a corporation doing business under the auspices of the Silk Association of America.

The testimony shows that some of the largest dealers in silk goods in Europe refuse to submit their differences to the arbitrament of conditioning houses and demand that their customers accept their certificates as final. But, on the other hand, it appears by a very clear and convincing preponderance of the testimony that the conditioning rule has been generally adopted by the trade, and that it has been so adopted because it was believed to be reasonable, stable, and necessary, and equitable between dealers in such yarns. Where in the assessment of tariff rates the duty depends upon the weight of an article it is the rule that such weight is to be found by taking the article in its condition at importation. Paragraph 404 of the act of 1909 especially applies this rule to silk. But where, as in this case, the purpose of weighing is only to ascertain by calculation the number indicating the size of yarn, and a selected piece of yarn is weighed for the purpose of such a calculation, a different problem presents itself. The weight of the yarn changes with different percentages of moisture in it, but the numbers indicating the size ought not to change according to such percentage of moisture.

The testimony shows such a general trade adoption of and acquiescence in the conditioning rule for finding the number according to the metric system that the reference to this system in paragraph 397 may fairly be held to have had the rule in contemplation.

The yarn in question was conditioned by the United States Silk Conditioning Co., above named, at the instance of the importer, and according to its finding and report the spinner's certificate was sustained and the yarn found to be No. 200 two-ply yarn. There seems to be no dispute about the correctness of this finding upon the basis of the conditioning rule; it is only the rule itself which is disputed by the Government.

In this view of the case, the decision of the board should be *affirmed.*

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(T. D. 31955.)

Type metal.

AMERICAN SMELTING & REFINING CO. *v.* UNITED STATES (No. 590).

BY-PRODUCT OF LEAD BULLION REFINED IN BONDED WAREHOUSE.

Roughly smelted lead bullion, imported and deposited in the bonded smelting warehouse of the importer; later refined, precious metals and a percentage of refined lead being extracted and leaving a by-product of lead, antimony, and other substances; this by-product is not to be deemed bullion, but type metal, and when this is withdrawn from the bonded warehouse for domestic consumption it is dutiable under paragraph 191, tariff act of 1909.

United States Court of Customs Appeals, October 12, 1911.

APPEAL from Board of United States General Appraisers G. A. 7148 (T. D. 31201).

[Decision reversed.]

Brown & Gerry (*James L. Gerry* of counsel) for appellant.

D. Frank Lloyd, Assistant Attorney General (*Martin T. Baldwin* on the brief), for the United States.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

SMITH, Judge, delivered the opinion of the court:

Certain lead bullion was imported at the port of Perth Amboy, N. J., and was subsequently smelted and refined under bond. A lead product resulting from the smelting and refining was withdrawn for domestic consumption and was assessed for duty by the collector of customs as lead bullion at 2⅛ cents per pound under the provisions of paragraph 182, and as provided in section 24 of the tariff act of August 5, 1909, the material parts of which paragraph and section are as follows:

182. Lead dross, lead bullion or base bullion, lead in pigs and bars, lead in any form not specially provided for in this section, old refuse lead run into blocks and bars, and old scrap lead fit only to be remanufactured; all the foregoing, two and one-eighth cents per pound; * * *.

SEC. 24. That the works of manufacturers engaged in smelting or refining, or both, of ores and crude metals, may upon the giving of satisfactory bonds be designated as bonded smelting warehouses. Ores or crude metals may be removed from the vessel or other vehicle in which imported, or from a bonded warehouse, into a bonded smelting warehouse without the payment of duties thereon and there smelted or refined, or both, together with other ores or crude metals of home or foreign production: *Provided*, That the several charges against such bonds may be canceled upon the exportation or delivery to a bonded manufacturing warehouse, established under section twenty-three of this act, of the actual amount of lead produced from the smelting or refining, or both, of such ores or crude metals: *And provided further*, That said lead may be withdrawn for domestic consumption or transferred to a bonded customs warehouse and withdrawn therefrom upon the payment of the duties chargeable against it in that condition: *Provided further*, That all labor performed and services rendered pursuant to this section shall be under the supervision of an officer of the customs, to be appointed by the Secretary of the Treasury, and at the expense of the manufacturer: *Provided further*, That all regulations for the carrying out of this section shall be prescribed by the Secretary of the Treasury.

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The American Smelting & Refining Co., which imported and refined the lead bullion, protested that the product resulting from the refining of said bullion was not lead bullion but type metal, and that therefore, in accordance with the provisions of section 24, it was dutiable at 1½ cents per pound on the lead contained therein, as provided by paragraph 191, which reads as follows:

191. Type metal, one and one-half cents per pound on the lead contained therein; new types twenty-five per centum ad valorem.

The Board of General Appraisers overruled the protest and the importers appealed.

From the report of the collector of customs, the testimony in the case, and the findings of the board, it appears that the importation was one of crude metal in the form of lead bullion, which had been roughly smelted at Monterey, Mexico, and shipped from Tampico, Mexico, to the United States. On arrival at destination the lead bullion was removed to the bonded smelting warehouse of the importers without the payment of duties and there subjected to a refining process which, as found by the board, extracted therefrom the precious metals and a percentage of refined lead, leaving a residuum or by-product, of which, on the average, 81 per cent was lead, 17 per cent antimony, and 2 per cent other substances, such as arsenic, copper, and silver. This residuum or by-product was withdrawn for domestic consumption, and is the article which the collector classified as antimonial lead dutiable at 2⅛ cents per pound under paragraph 182, by reason of the provisions of section 24, and which the board decided was dutiable as lead bullion at the same rate under the same paragraph and section . On this state of facts there is but one question presented by this appeal, and that is, What construction should be put upon section 24, and particularly upon that part of it dealing with lead withdrawn for domestic consumption? That section provides in effect:

First. That *manufacturers* engaged in the smelting or refining of ores and crude metals may secure the designation of their works as bonded smelting warehouses by giving satisfactory bonds.

Second. That imported ores and crude metals may be transferred to such bonded smelting warehouses without the payment of duties and there smelted or refined, or both, together with other ores or crude metals of home or foreign production.

Third. That the several charges against such bonds may be canceled upon the exportation or delivery to a bonded manufacturing warehouse established under section 23 of the act of the actual amount of lead produced from the smelting or refining, or both, of such ores or crude metals.

Fourth. That said lead may be withdrawn for domestic consumption upon payment of the duties chargeable against it *in that condition.*

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It seems to us that these provisions indicate with a fair degree of clearness that lead produced in bonded smelting warehouses by the smelting or refining of imported ores or crude metals may be withdrawn for domestic consumption upon the payment of the duties chargeable against it in its smelted or refined condition. Instead of making the withdrawal of such lead dependent upon the payment of the duties which attached to it in its imported condition Congress explicitly provided that it might be withdrawn on the payment of the duties chargeable against it "in that condition," that is to say, the condition in which it was found after smelting or refining or both. Now, what was the smelted or refined condition of the lead product withdrawn for domestic consumption? Was it a lead bullion or a base bullion? We think not—certainly not if bullion is to receive its definite and recognized meaning. The term "bullion" means a mixture of metals of which gold or silver or both are constituent parts, and if used without qualifying words signifies in this country a mixture of gold and silver in the form of bars, plates, or ingots. Base bullion is a combination of a base metal with gold or silver or both. Lead bullion is a base bullion and is made up of the base metal lead and gold or silver or both. (Standard Dictionary; Century Dictionary; Notes on Tariff Revision, par. 182.) The board found that the smelting of the lead bullion imported resulted in the extraction from it of the gold and silver which it contained. What was left after smelting, namely, the product under discussion, could not therefore have contained gold or silver, certainly not in an appreciable amount, otherwise mention of one or both of these precious metals would have been made in the report of the official analysis. Consequently it would seem that the product withdrawn for domestic consumption was not a bullion, and that the finding of the board that it was dutiable as lead bullion or base bullion was not warranted by its status at the time of withdrawal, when duties became chargeable against it, not in its imported but in its smelted condition.

According to the chemical analysis the article assessed for duty contains on the average 81 per cent of lead and 17 per cent of antimony, thus accounting for 98 per cent of the component materials, and leaving 2 per cent unaccounted for, which, in all probability, consists of negligible quantities of other metals, such as arsenic, copper, and silver. Such a mixture of lead and antimony, even if it contain a small percentage of arsenic, copper, and silver, is, according to the uncontradicted testimony, a type metal. It falls within the definition of type metal as announced by the board in T. D. 28511, it is the article which since 1907 has been admitted by the customhouse as type metal, it was bought and sold in this case as type metal, it is admitted by the Government to be type metal, and in our opin-

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ion it is a type metal. Type metal is lead in a form specially provided for in paragraph 191, and we think therefore that the product in controversy is, by virtue of the second proviso to section 24, subject to the duty prescribed by that paragraph. Section 23 provides that by-products incident to the processes of manufacture in bonded manufacturing warehouses may be withdrawn for domestic consumption upon the payment of a duty equal to the duty which would be assessed and collected by law if such by-products were imported from a foreign country. It seems to us that the second proviso of section 24 had a similar purpose in view, and that it was designed and intended by Congress to put lead products resulting from the smelting or refining of ores or crude metals in bonded smelting warehouses in the same position with respect to duty as by-products of bonded manufacturing warehouses and in no worse position than imported materials of the same kind. Certainly it would be anomalous that the by-product of a bonded smelting warehouse should be made dutiable on a basis different from that fixed for the by-products of bonded manufacturing warehouses.

The decision of the Board of General Appraisers is *reversed.*

(T. D. 31956.)

Artificial flowers.

HAMBURGER *v.* UNITED STATES (No. 625).

CELLULOID IMITATION FLOWERS—ROSE PINS.

The certainty required in a commercial designation is not here shown, and it appearing that the small imitation flowers of the importation are made of celluloid and attached to metal pins, designed to be worn as boutonnières, and that they are so worn by adults, they can not be taken to be "toys"; they were dutiable as artificial flowers under paragraph 425, tariff act of 1897.

United States Court of Customs Appeals, October 12, 1911.

APPEAL from United States Circuit Court for Southern District of New York, Abstract 18920 (T. D. 28998).

[Decision affirmed.]

Brown & Gerry for appellant.

D. Frank Lloyd, Assistant Attorney General (*Charles E. McNabb* on the brief), for the United States.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

SMITH, Judge, delivered the opinion of the court:

This case involves the classification of certain flower pins imported at the port of New York. These articles are small imitation flowers made of celluloid, attached to metal pins, and are designed and intended to be worn as boutonnières. The collector of customs classified the

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merchandise as "artificial flowers" and assessed them for duty at 50 per cent ad valorem under the provisions of paragraph 425 of the tariff act of July 24, 1897, which paragraph reads, in part, as follows:

425. * * * artificial or ornamental feathers, fruits, grains, leaves, flowers, and stems or parts thereof, of whatever material composed, not specially provided for in this act, fifty per centum ad valorem.

The importers protested that the goods were "toys," and claimed that as such they were dutiable at 35 per cent ad valorem under the provisions of paragraph 418, which reads as follows:

418. Dolls, doll heads, toy marbles of whatever materials composed, and all other toys not composed of rubber, china, porcelain, parian, bisque, earthen or stone ware, and not specially provided for in this act, thirty-five per centum ad valorem.

The Board of General Appraisers overruled the protest, and the importers appealed to the United States Circuit Court for the Southern District of New York, which affirmed the decision of the board. From the judgment of the Circuit Court the importers again appealed to the United States Circuit Court of Appeals, and that appeal having been transferred by the act of August 5, 1909, to this court, is now submitted to it for determination.

On the hearing before the board the importers contended and sought to prove that the goods in question were toys in fact and that at and prior to the passage of the tariff act of July 24, 1897, they were generally, definitely, and uniformly known to the trade of the country as "toys." We think that neither contention was established by satisfactory evidence. Testimony to the effect that the flower pins were worn by children on festive occasions; that they were used as gifts in prize packages purchased by children; and that they were bought and sold by toy dealers and dealers in notions fell short of showing that the articles were toys—that is to say, playthings, things intended and designed for the amusement of children only, and which by their very nature and character were reasonably fitted for no other purpose. An examination of the samples in evidence discloses that the flower pins in question are neither more nor less than boutonnières of artificial flowers, and it affirmatively appearing from the record that they can be and are worn by adults as boutonnières it can hardly be said that they are designed and intended for the amusement of children only and are reasonably fitted for no other purpose. In the case of United States *v.* Cattus (167 Fed. Rep., 522) it was decided that artificial shamrocks worn by men, women, and children of the Irish race on St. Patrick's Day were not toys, and as artificial boutonnières or "flower pins" do not materially differ from artificial shamrocks we think the reasoning which excluded the latter must exclude the former from the category of toys.

The testimony as to commercial designation was weak and unsatisfactory, and the conclusion of the importers' witnesses that "flower

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pins" were recognized by the trade generally and uniformly as toys seems to have been based largely upon the fact that they were used by children for amusement; that they served the purpose of gifts in prize packages sold to children; and that they were handled by dealers in toys and notions. None of the witnesses would say that the imported articles were bought and sold by the trade as toys, and one of them declined to say that they were "a trade and commerce toy." In view of this state of the evidence and of the fact that in previous controversies concerning the dutiability of imitation flowers made of celluloid and attached to metallic pins merchants did not always claim them to be toys (T. D. 14706; T. D. 14938), we do not feel warranted in holding that the importers have proven a commercial designation of the goods with that positiveness, definiteness, and certainty which the decisions seem to require.

The judgment of the Circuit Court is *affirmed.*

(T. D. 31957.)

Tissue-paper fans.

UNITED STATES *v.* MASON BROS. & CO. (No. 726).

ARTICLES COMPOSED OF TISSUE PAPER.

The proviso to paragraph 410, tariff act of 1909, covers all articles composed of tissue paper, and by providing that such articles shall pay no less rate of duty than that imposed upon the component paper of chief value of which any such article is made, the classification of tissue-paper fans was fixed as proper under that paragraph.—Downing *v.* United States (141 Fed. Rep. 490; T. D. 26454) distinguished.

United States Court of Customs Appeals, October 12, 1911.

APPEAL from Board of United States General Appraisers, Abstract 26241 (T. D. 31804).

[Decision reversed.]

William L. Wemple, Assistant Attorney General (*Frank L. Lawrence* on the brief), for the United States.

No appearance for appellee.

Before MONTGOMERY, SMITH, BARBER, and MARTIN, Judges.

MONTGOMERY, Presiding Judge, delivered the opinion of the court:

The merchandise entered consisted of fans made of tissue paper, and was assessed for duty under paragraph 410 of the tariff act of 1909 as articles composed wholly or in chief value of paper.

Relevant portions of paragraph 410 read as follows:

Papers commonly known as * * * tissue paper, * * * five cents per pound and fifteen per centum ad valorem * * *: *Provided*, That no article composed wholly or in chief value of one or more of the papers specified in this paragraph shall pay a less rate of duty than that imposed upon the component paper of chief value of which such article is made.

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The importer contended and the Board of General Appraisers held that the fans in question were dutiable as manufactures of paper not specially provided for. This holding was based upon the decision of the court in Downing *v.* United States (141 Fed. Rep., 490; T. D. 26454).

An examination of the act of 1897, which was construed in Downing *v.* United States, discloses that while tissue paper was made dutiable by paragraph 397, there was no provision covering articles composed of tissue paper. That case is therefore no authority to sustain the holding of the board in the present case.

This distinction was evidently overlooked, as it seems perfectly clear that the proviso in question covers all articles composed of tissue paper, and in providing that such articles shall pay no less rate of duty than that imposed upon the component paper of chief value of which such article is made, the language of the act itself fixes the classification for the present importation.

The decision of the Board of General Appraisers is reversed, and the assessment is *affirmed.*

(T. D. 31958.)

Narrow cotton fabric.

Narrow cotton fabric invoiced as "cotton machinery belting" dutiable as "cotton webbing" under paragraph 349, tariff act of 1909, at the rate of 60 per cent ad valorem.

TREASURY DEPARTMENT, *October 26, 1911.*

SIR: Referring to the department's letter of the 16th instant, relative to the classification of a narrow cotton fabric invoiced as "cotton machinery belting" and assessed with duty at your port as cotton webbing at the rate of 60 per cent ad valorem, under paragraph 349 of the tariff act, I have to advise you that it appears that there is a lack of uniformity in the classification of this merchandise, one port assessing duty thereon as spindle banding at the rate of 10 cents per pound and 15 per cent ad valorem, under paragraph 330 of the said act, while the classification at New York is in harmony with the practice at your port in this regard.

After a careful consideration of this question, the department is of the opinion that this merchandise is properly dutiable as cotton webbing under paragraph 349 at the rate of 60 per cent ad valorem, and your assessment of duty at this rate is accordingly approved.

Respectfully, JAMES F. CURTIS,
(89488.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Cleveland, Ohio.*

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(T. D. 31959.)

Drawback on pocket mirrors.

Drawback on pocket mirrors manufactured by Whitehead & Hoag, of Newark, N. J., with the use of imported mirror glass.

TREASURY DEPARTMENT, *October 26, 1911.*

SIR: Drawback is hereby allowed under section 25 of the tariff act of August 5, 1909, and the regulations promulgated thereunder (T. D. 31695 of June 16, 1911), on pocket mirrors manufactured by Whitehead & Hoag, of Newark, N. J., with the use of imported mirror glass.

The allowance shall not exceed for each mirror exported one imported mirror glass of a size corresponding to that appearing in the exported completed article, no allowance being made for wastage.

The manufacturers' sworn statement, dated October 11, 1911, is inclosed herewith for filing in your office.

Respectfully, JAMES F. CURTIS,
(90904) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 31960.)

Disinfection of glue stock.

TREASURY DEPARTMENT, *October 28, 1911.*

To officers of the customs and others concerned:

The Secretary of Agriculture advises the department that it has been represented to his departmeut by a delegation of glue manufacturers of this country that the material in which they are particularly interested, so far as the regulations in connection with disinfection are concerned, consists of dry limed fleshings, which material is scraped or shaved from the inner surface of limed hides or hides which have been subjected to a liming process principally for the purpose of depilation preparatory to tanning.

The Secretary states that it would appear, therefore, that the fleshings removed from the inside of the hides, like the hair which is removed from the outside during this processing, should be exempt from the disinfection requirement as applying to hides of neat cattle under the provisions of T. D. 30583 and the amendment thereto, T. D. 30913, and he requests that the Secretary of State be asked, in view of the character and treatment of this material, to instruct the American consuls at Madras and other foreign ports at which dry limed fleshings are accumulated or are hereafter offered for shipment, to permit the same to come forward, until further notice, without disin-

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fection and without certification other than that such shipments consist exclusively of dry limed fleshings. The opinion is expressed, however, by the Secretary of Agriculture that this exemption should not apply to cuttings or trimmings from the edges of hides, or pieces of hides, which represent the hide in its full thickness or entirety, as such cuttings or trimmings should be subject to the same requirements as the hides themselves.

The Secretary of State has this day been requested to instruct the consular officers concerned in accordance with the foregoing.

T. D. 30583 and 30913, of May 2 and September 10, 1910, respectively, are therefore hereby amended accordingly.

JAMES F. CURTIS, *Assistant Secretary.*

(T. D. 31961.)

Examination of teas.

Method to be used to ascertain artificial coloring or facing matter in tea by chemical analysis.—T. D. 31920 of October 16, 1911, amended.

TREASURY DEPARTMENT, *October 28, 1911.*

SIR: Referring to the department's instructions addressed to you under date of October 16, 1911 (T. D. 31920), in regard to the method to be used to ascertain artificial coloring or facing matter in tea by chemical analysis, I have to inform you that said instructions are hereby amended by the insertion, after the word "sieve," in the ninth line, of the words "The filtrate should be subjected to a centrifugal separation." You will be governed accordingly.

Respectfully, JAMES F. CURTIS,
(61680-3.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 31962.)

Sulphur.

Sulphur mined in Hokkaido free of duty under paragraph 686, tariff act of 1909.—T. D. 31775 of July 25, 1911, revoked.

TREASURY DEPARTMENT, *October 28, 1911.*

SIR: Referring to the decision of the department of July 25, 1911 (T. D. 31775), that sulphur mined in Hokkaido and exported from Hakodate, Japan, should be assessed with duty as sulphur, refined, at the rate of $4 per ton under paragraph 81 of the tariff act, I have to advise you that, in view of further facts which have been presented to the department since the ruling was promulgated, it is satisfied that

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this sulphur, which is roasted in furnaces after being taken from the mines and contains from 90 to 97 per cent of pure sulphur, is not refined within the meaning of said paragraph 81.

T. D. 31775 is accordingly revoked, and you are directed to admit the sulphur referred to free of duty under paragraph 686 of the said act.

The revocation of the department's ruling embodied in T. D. 31775 should not be construed to apply to the so-called Bungo sulphur, which, in the opinion of the department, is dutiable as refined sulphur under paragraph 81 at the rate of $4 per ton.

Respectfully, JAMES F. CURTIS,
(67678.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Portland, Oreg.*

(T. D. 31963.)

Employment of persons under schedule A, Rule II, clause 3, civil service rules.

[Circular No. 63.]

TREASURY DEPARTMENT, *October 27, 1911.*

To officers and employees of the Treasury Department and others concerned:

The appended Executive order is published for your information and observance:

JAMES F. CURTIS, *Acting Secretary.*

EXECUTIVE ORDER.

Schedule A of positions excepted from examination under Rule II, clause 3, of the civil service rules is hereby amended by substituting for paragraph 6 of Subdivision I, which reads:

"6. Any person receiving not more than $300 per annum compensation for his personal salary, who may lawfully perform his official duties in connection with his private business, such duties requiring only a portion of his time"—

the following:

"6. Any person receiving for his personal salary compensation aggregating not more than $300 per annum whose duties require only a portion of his time, or whose services are needed for very brief periods at intervals: *Provided*, That employment under this provision shall not be for job work such as contemplated in section 4 of Rule VIII. The name of the employee, designation, duties, rate of pay, and place of employment shall be shown in the periodical reports of changes; and in addition, when payment is not at a per annum rate, the total service rendered and the distribution of such service during the year shall be shown in the report of changes at the end of each year or when the employee is separated from the service."

WM. H. TAFT.

THE WHITE HOUSE, *October 14, 1911.*

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(T. D. 31964.)

Drawback on ladies' waists.

Drawback on ladies' waists manufactured by Brill & Krigsman, of New York City, with the use of imported linens, embroideries, and laces.

TREASURY DEPARTMENT, *October 30, 1911.*

SIR: Drawback is hereby allowed under section 25 of the tariff act of August 5, 1909, and the regulations promulgated thereunder (T. D. 31695 of June 16, 1911), on ladies' waists, manufactured by Brill & Krigsman, of New York City, with the use of imported linens, embroideries, and laces.

The allowance shall not exceed the quantities specified in the manufacturers' sworn statement, dated October 12, 1911, transmitted herewith for filing in your office.

Sworn supplemental statements covering additional styles and sizes may be filed from time to time and after official verification drawback may be allowed under this decision.

Respectfully, JAMES F. CURTIS,
(55109.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 31965—G. A. 7288.)

Beaded fan chains.

Chains composed of glass beads strung on strands of cotton thread in a substantial manner, having a snap attached for fastening to fans or other articles, are not toys, but are articles used by adults and dutiable under paragraph 421, tariff act of 1909, as "articles not specially provided for, * * * composed wholly or in chief value of beads."—G. A. 7251 (T. D. 31786) modified.

United States General Appraisers, New York, October 23, 1911.

In the matter of protest 471839-36173 of Bernard, Judae & Co. against the assessment of duty by the collector of customs at the port of Chicago.

Before Board 1 (SHARRETTS, MCCLELLAND, and CHAMBERLAIN, General Appraisers).

SHARRETTS, *General Appraiser:* The merchandise marked "A" in blue pencil on the invoice, as shown by the sample introduced in evidence, consists of chains composed of glass beads strung on strands of cotton thread in a substantial manner, having a snap attached for fastening to fans or other articles. The chain is fastened at the ends, making a continuous string about 36 inches in circumference, having larger and different colored beads at equal intervals throughout. Duty was assessed thereon at 60 per cent ad valorem under paragraph 421 of the act of 1909, and the claims in the protest are that the articles are dutiable as toys at 35 per cent ad valorem under paragraph

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431, or as manufactures of glass at 45 per cent ad valorem under paragraph 109 of said act.

The evidence introduced consists of the testimony of one witness (an employee of the importing firm), who had no experience in buying and very little in selling the merchandise in this country. He stated that the merchandise was sold to a newspaper or magazine, and, he believed, was intended to be given away as a premium. Upon such a meager record we do not think the importer has overcome the presumption of correctness that attaches to the collector's classification. An inspection of the sample shows that the merchandise is not a toy for use in the amusement of children, but is a chain of a substantial character which can be, and no doubt is, used for wearing about the neck with fans or other articles attached thereto, and known as a fan chain.

In G. A. 7251 (T. D. 31786) this board held that necklaces and chains composed of beads, fastened with a cheap brass clasp and valued at not more than 11 marks per gross, were dutiable as toys. The samples then before us and the testimony produced did not relate to chains of the character here in question, although the decision would seem to include such merchandise, as the articles in the case at bar are valued at less than 11 marks per gross.

In G. A. 6658 (T. D. 28391) this board held that fan chains composed of beads were not toys, and it would seem that chains of all kinds, composed in chief value of beads, whether or not they are valued at less than 11 marks per gross, if they are of a size and character suitable for use by adults, are dutiable at 60 per cent ad valorem under paragraph 421 as "articles not specially provided for, * * * composed wholly or in chief value of beads." We find that the chains in question, marked "A" on the invoice, are not toys, and as to said merchandise the protest is overruled and the collector's decision affirmed. G. A. 7251 (T. D. 31786), *supra*, is hereby modified so far as it relates to chains which are used by adults for fastening fans and other articles thereto.

The items marked "B" on the invoice cover toy necklaces composed in chief value of beads and valued at less than 11 marks per gross, and, as to said merchandise, on the authority of G. A. 7251, *supra*, we sustain the protest claiming 35 per cent ad valorem duty thereon under paragraph 431, the collector's decision relative thereto being reversed.

As to the merchandise invoiced as "toy pins, celluloid," assessed as artificial flowers at 60 per cent ad valorem under paragraph 438, act of 1909, no samples having been produced or evidence procured to show that the articles are toys, we overrule the protest, the collector's decision relative thereto being affirmed.

The collector's decision is modified accordingly.

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(T. D. 31966—G. A. 7289.)

Figured cottons—Thread count.

In determining the count of threads per square inch of madras muslin, all the warp and filling threads, whether ordinary or other than ordinary, and whether clipped or unclipped, must be counted, in accordance with the provisions of paragraph 320, tariff act of 1909, and it is immaterial that the count may differ in various portions of the fabric.

United States General Appraisers, New York, October 25, 1911.

In the matter of protest 424152 of Witcombe, McGeachin & Co. against the assessment of duty by the collector of customs at the port of New York.

Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers).

COOPER, *General Appraiser:* The merchandise covered by this protest was returned by the appraiser as a cotton fabric known as madras muslin. Duty was collected thereon at the applicable rates under paragraphs 315 and 323, tariff act of 1909, as cotton cloth counting over 100 and not over 150 threads per square inch and figured by the introduction of threads other than the ordinary warp and filling.

The issue to be determined is, What is the correct and proper count of threads per square inch in order to ascertain the rates of duty applicable? This question involves the interpretation and meaning of that part of paragraph 320 of the tariff act of 1909, which reads:

* * * In determining the count of threads to the square inch in cotton cloth, all the warp and filling threads, whether ordinary or other than ordinary, and whether clipped or unclipped, shall be counted. * * *

Two samples were introduced in evidence, Exhibit 1 representing the merchandise in controversy, which was returned as counting over 100 and less than 150 threads to the square inch, and illustrative Exhibit A, which was returned as counting over 50 and less than 100 threads to the square inch. Exhibit 1 has a bleached or unbleached foundation and figures formed by the introduction of threads of two colors interwoven with the foundation threads. Illustrative Exhibit A is similar, but the figures therein are formed by threads of one color.

The case was submitted on the following stipulation:

It is stipulated and agreed that the foundation of Exhibit 1 and illustrative Exhibit A is less than 100 threads to the square inch. It is stipulated and agreed that in Exhibit 1 and illustrative Exhibit A the count of threads in the foundation plus the count of threads in one color to form a figure is less than 100 threads to the square inch. It is stipulated and agreed that wherever there are two colors forming a figure and the foundation, as in the portions marked "X" on Exhibit 1, the count is more than 100 threads to the square inch and less than 150.

The contention of the importers that duty should be levied on the merchandise in the condition as imported is undeniable. There is no evidence before us as to how the fabric is woven, but it is conceded that it is madras muslin, which is defined as "a light fabric figured by the insertion of thick weft threads, which are cut away where there

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is to be no figure." (Design in Textile Fabrics, by Thomas R. Ashenhurst.) The same writer describes madras muslin as follows:

One class of fabrics, which gives pretty effects upon light cloth, is known as madras muslin. This is a very light texture indeed, with a figure formed by the introduction of a thick thread of weft into the ground and then cut away where no figure is formed, so that it is really an alternation of thick, or moderately thick, and very thin, light cloth. Similar effects are also produced in fancy-colored goods, two or even three colors of weft being employed to form figures, sometimes one weaving plain into the ground cloth, and the other figuring upon it, and sometimes both entering partly into the ground cloth and figuring alternately; and, as in the previous case, when no figure is being formed the extra material, which would otherwise go to the back, is cut away.

The goods are not then imported as woven, but the clipping process is essential and necessary to the completion of the fabric and adds to its value and attractiveness for the uses to which it is to be put. Portions of the colored threads, which as originally woven run from selvage to selvage, remain in the goods in the condition as imported, forming the figure, and being an essential part of the finished goods. These clipped threads remaining in the fabric are nevertheless "threads," for it has been held by the board and the courts that the word "threads" as used in paragraph 313 of the tariff act of 1897 includes whatever cotton fiber or filaments are used in the fabrication of cotton cloth. G. A. 6592 (T. D. 28173); MacLea *v.* United States (167 Fed. Rep., 688; T. D. 29569); G. A. 6964 (T. D. 30269). In following the instructions of paragraph 320 of the present act these clipped threads must be counted, although they may be a very small part of the thread which was originally woven into the fabric. They enter into the construction of the goods, and the cost of manufacture included the threads themselves as well as the labor of weaving them and of clipping them. This being so, it is proper that the clipped threads remaining in the fabric should be included in the count of threads per square inch to determine the dutiability of the finished fabrics, and the tariff law of 1909 provided for including in the count these clipped threads. Therefore, in the ascertainment of the duty and the determination of the thread count under paragraph 320, the goods are taken in the condition as imported and the clipped threads remaining therein must be counted.

The importers also contend that "in no event shall cotton cloth be assessed for duty purposes at a higher thread count than appears in any square inch of the fabric, and that in fabrics where the thread count varies, that count must be taken which is the count of the most substantial portions of the fabric in area."

The case of Fuld *v.* United States (138 Fed. Rep., 973; T. D. 26196), cited by counsel for the importers to support this contention, is not an authority for this proposition. It is not necessarily the most substantial portions of the fabric which must govern, but it is mandatory

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that all the threads, clipped or unclipped, shall be counted. The case of Quaintance *v.* United States (147 Fed. Rep., 753; T. D. 26999), also cited by the counsel for importers, seems to have no bearing on the point at issue here. In that case the court held that want of homogeneity in the thread count did not exclude the goods from classification as countable cotton cloth. There was apparently no question raised as to the count of threads, but the court stated that "in no part of the fabrics in question did the count of threads exceed 100 to the square inch."

There is no evidence in this case as to the method of determining the thread count of goods of this description. The importers have failed to point out in what respect the count returned by the appraiser is wrong or what the correct count should be. It appears that the collector has complied with the law in counting all the threads, and in so doing it is immaterial that the count may differ in various portions of the fabric.

The protest is overruled.

(T. D. 31967—G. A. 7290.)

Pictures in frames composed in chief value of glass beads.

Religious pictures composed of paper lithographically printed, covered with glass and mounted in frames composed wholly of beads of different colors strung on cotton threads, glass beads being the component of chief value, are dutiable as beaded articles under paragraph 421, tariff act of 1909.—United States *v.* Benziger (178 Fed. Rep., 1006; T. D. 30386) distinguished.

United States General Appraisers, New York, October 25, 1911.

In the matter of protest 482140 of H. Bischoff & Co. against the assessment of duty by the collector of customs at the port of New York.

Before Board 1 (SHARRETTS, MCCLELLAND, and CHAMBERLAIN, General Appraisers; MCCLELLAND, G. A., absent).

SHARRETTS, *General Appraiser:* This protest relates to pictures composed wholly or in chief value of paper lithographically printed from stone, metal, or a material other than gelatin. These pictures are covered with glass and are mounted in frames composed wholly of beads of different colors strung on cotton threads. The lithographic pictures are religious in character, and this fact forms the basis of the importers' contention that, on the authority of the Benziger case (178 Fed. Rep., 1006; T. D. 30386), they are not beaded articles within the meaning of paragraph 421 of the tariff act of 1909, under which paragraph they were returned for duty by the collector at 60 per cent ad valorem.

Rosaries, the subject of the decision cited, are articles used exclusively for devotional purposes. They are not ornaments, nor are they ornamental in the sense of being made attractive for purposes of display. On the contrary, rosaries are usually carried in the pocket or

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otherwise hidden from view except when being used at prayers. Biblical pictures, on the other hand, whether the creation be in oil by one of the great masters or lithographic prints the work of an artisan, appeal to the artistic taste of the public, and although such pictures may inspire devotional feelings in those religiously inclined, they are intended for exhibition in art collections or to adorn the walls of private dwellings.

In the present case, the lithographic pictures have been made more ornamental by mounting them in frames composed of beads. No proof having been offered touching the value of the beads as compared with that of the other materials composing the completed article, the presumption follows that they were correctly classified for duty as articles composed in chief value of beads. We find such to be the case. The protest is accordingly overruled and the collector's decision affirmed.

(T. D. 31968—G. A. 7291.)

Metal-thread beltings.

1. METAL-THREAD BELTINGS—METAL THREAD—METAL.

Congress has provided, in paragragh 179, tariff act of 1909, for metal thread as a material, and thus distinguished it from the material metal. The provision in paragraph 349 of said act for "beltings * * * of cotton, india rubber, and metal" is, therefore, not applicable to metal-thread beltings.

2. SAME.

Beltings of metal thread, cotton, and india rubber, metal thread chief value, are dutiable as "beltings * * * in chief value of * * * metal threads," under paragraph 179, tariff act of 1909, and not as "beltings * * * of cotton, * * * india rubber, and metal," under paragraph 349 of said act, the provision in paragraph 179 being unlimited, while that in paragraph 349 is qualified by the phrase "not elsewhere specially provided for."

United States General Appraisers, New York, October 27, 1911.

In the matter of protests 487988, etc., of M. L. Eckstein & Co. et al. against the assessment of duty by the collector of customs at the port of New York.

Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers).

FISCHER, *General Appraiser:* The claim of the importers in these cases is against the classification of certain beltings which are reported to be made up of metal thread, cotton, and india rubber, metal thread chief value. The provision under which the said goods were assessed (par. 179, tariff act of 1909) reads:

Beltings, * * * made wholly or in chief value of * * * metal threads, fifteen cents per pound and sixty per centum ad valorem.

The provision under which it is claimed that the goods should have been classified (par. 349) reads:

Beltings, * * * of cotton, flax, or other vegetable fiber, india rubber, and metal and not elsewhere specially provided for in this section, sixty per centum ad valorem.

If both of these provisions are comprehensive enough to cover the articles, and we think they are, it follows that the provision for

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beltings in chief value of metal threads (unqualified) controls over the provision for beltings of cotton, india rubber, and metal, which is limited by the words "not elsewhere specially provided for in this section." Paragraph 179 accurately describes the imported merchandise and provides specifically for a belting in chief value of "metal threads" without regard to the other materials composing it, and we believe it controls over the provision which, while it also includes the article, is qualified by the phrase "not elsewhere specially provided for." The classification of the article necessarily falls under the unqualified provision.

There is another reason why in our opinion the provision in paragraph 179 must prevail over that in paragraph 349. Congress has provided for "metal thread" as a material and has thus distinguished it from the material "metal." Note the ruling of the board in G. A. 4734 (T. D. 22381). It has been urged that this construction would in part nullify the provision in paragraph 349. We can not take that view of the matter. The provision in paragraph 349 may well apply to elastic goods of cotton ornamented with metal, such as metal-studded belting, and to elastic belts with metal buckles, and as to such merchandise no question could be raised. But in these cases the merchandise is composed of cotton, india rubber, and metal thread, and not of cotton, india rubber, and metal, and as the textile component of chief value in the belting is the metal thread the goods have been properly classified by the collector. The protests are hereby overruled.

(T. D. 31969—G. A. 7292.)

Dropping bottles.

Dropping bottles composed of flint glass blown in a mold, having glass stoppers ground to fit the necks of the bottles, which, when properly adjusted make the bottles air tight, in which stoppers there are two grooves corresponding with two grooves on the inner surface of the neck of each bottle, the word "ether" appearing on the side of each bottle, which, as well as the grooves, was produced in molding, are not dutiable as "bottles, * * * printed" under paragraph 98, tariff act of 1909, but are dutiable as "molded or pressed and flint, lime, or lead glass bottles * * * suitable for use as and of the character ordinarily employed as containers for the holding or transportation of merchandise, and not as appliances or implements in chemical or other operations," under paragraph 97 of said act.

United States General Appraisers, New York, October 30, 1911.

In the matter of protest 485570 of Surgical Supply Importing Co. against the assessment of duty by the collector of customs at the port of New York.

Before Board 1 (SHARRETTS, MCCLELLAND, and CHAMBERLAIN, General Appraisers; MCCLELLAND, G. A., absent).

SHARRETTS, *General Appraiser:* The merchandise in question consists of flint-glass bottles known as dropping bottles, of which there

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are several varieties on the market, some merely having a lip projecting from the rim, others a pipette inserted in the bottle, and still others, like these now in question, having glass stoppers ground to fit the necks of the bottles, in which there are two grooves corresponding with those on the inner surface of the neck of each bottle. The stopper when properly adjusted permits the fluid contents of the bottle to escape a drop at a time. By turning the stopper sufficiently to break the connection between the grooves, the bottles become the ordinary air-tight containers for volatile fluids. The word "ether" in raised letters that appear on the side of each bottle, as well as the grooves referred to, was produced in molding the articles and not by any of the processes named in paragraph 98. The collector's classification of the merchandise as "bottles, printed" consequently is erroneous; nevertheless, we are required to decide whether it is dutiable at 60 per cent ad valorem under paragraph 98, act of 1909, as assessed, perforce of the provisions thereof for "bottles * * * blown either in a mold or otherwise," or, as claimed by the importer, under paragraph 97 at not less than 40 per cent ad valorem as "molded or pressed, and flint, lime, or lead glass bottles" suitable for use as and "of the character ordinarily employed as containers for the holding or transportation of merchandise, and not as appliances or implements in chemical or other operations."

Bottles of a form and description that can only be blown free-handed unquestionably fall for duty under paragraph 98. All glass bottles and bottle glassware, including ordinary containers, however, are blown in a mold, as may be seen by referring to standard authorities. (See Ure's Dictionary of Arts, etc., pp. 652 and 653, and Spon's Encyclopædia of Manufactures, p. 1076.) Indeed, from common knowledge we know that bottles, being larger at the base than at the neck, can only be made by blowing; hence, if we adhere literally to the language of paragraph 98, all bottles are classifiable thereunder to the effacement of paragraph 97. Statutes, however, must be construed so as to be harmonious in all parts and effect be given, as far as practicable, to every word and phrase employed by the legislators. So well known is this rule that it is not necessary to cite an authority in its support. We must therefore conclude that, within the intent of Congress, all molded glass bottles, although necessarily blown, that fulfill all of the conditions of paragraph 97, are dutiable thereunder unless they have been subjected to some one or more of the superadded processes named in paragraph 98. It is thought worthy of remark that it occasionally happens that common flint-glass bottles, serving no use other than as containers, are crudely marked with a small number by a process similar to etching. These numbers serve no purpose except for the orderly arrangement in classes of such bottles on the shelves of apothecaries or in chemical laboratories. So trifling and unimportant

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in the process of manufacture are these designating marks that, under the principle of *de minimis non curat lex*, they do not, in our opinion, amount to etching within the intendment of the law.

The bottles in question are common flint-glass bottles, not appliances or instruments in chemical or other operations, and are intended for use as containers for ether, the dropping device and inscription being produced in the process of molding the bottles for the convenience of consumers.

We accordingly hold that the merchandise in question is dutiable at the appropriate specific rate or at not less than 40 per cent ad valorem under the provisions of paragraph 97 of the tariff act of 1909, to which extent the protest is sustained, the collector's decision being reversed.

(T. D. 31970—G. A. 7293.)

Silk ribbons.

Silk ribbons known as St. Etienne ribbons, not exceeding 12 inches in width and having fast edges, are properly dutiable under the denominative provision for ribbons in paragraph 401, tariff act of 1909.

United States General Appraisers, New York, October 30, 1911.

In the matter of protests 430566–38634, etc., of Gage Bros. & Co. against the assessment of duty by the collector of customs at the port of Chicago.

Before Board 2 (Fischer, Howell, and Cooper, General Appraisers).

Howell, *General Appraiser*: It appears from the report of the appraiser at the port of Chicago, where this case arises, that the goods in question are what are known as St. Etienne ribbons. They were classified as silk trimmings dutiable at the rate of 60 per cent ad valorem under paragraph 402, tariff act of 1909, and are claimed to be dutiable under the provision in paragraph 401 of said act for silk ribbons not exceeding 12 inches in width, having fast edges and not embroidered n any manner.

The goods appear to be in all respects similar to those held by this board and the courts to be dutiable under the tariff act of 1897 as silk trimmings. Loewenthal *v.* United States, decided by the Court of Customs Appeals (T. D. 31592), and cases therein cited.

In the tariff act of 1897 there was no denominative provision for ribbons, and as goods like those here in question were found to have been known commercially as trimmings, they were held to be dutiable under the *eo nomine* provision for trimmings in paragraph 390 of said act. The decisions approving of such classification under the tariff act of 1897 recognized the fact that the term "trimmings" is a comprehensive one, and may include articles which have a more specific name in the trade, but which nevertheless fall within the more general term and are dutiable thereunder in the absence of more specific enumeration.

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In the tariff act of 1909 ribbons of the character of those before us are denominatively provided for in paragraph 401, and this specific enumeration operates to take them out of the more general provision for trimmings.

The protests are accordingly sustained, and the decision of the collector in each case is reversed.

(T. D. 31971.)

Abstracts of decisions of the Board of General Appraisers.

Board 1.—Sharretts, McClelland, and Chamberlain. *Board 2.*—Fischer, Howell and Cooper. *Board 3.*—Waite, Somerville, and Hay.

BEFORE BOARD 1, OCTOBER 23, 1911.

No. 26927.—GLASS KNOBS.—Protest 493604 of F. H. Shallus (Baltimore). Opinion by Sharretts, G. A.

Glass knobs molded or pressed, but not blown, classified as articles of glass blown in a mold under paragraph 98, tariff act of 1909, were held dutiable as manufactures of glass (par. 109), as claimed by the importer.

No. 26928.—TOY MOVING-PICTURE FILMS.—Protests 408057, etc., of A. Forster & Co. et al. (Philadelphia.) Opinion by Sharretts, G. A.

Protest sustained as to toy moving-picture films on the authority of Abstract 26498 (T. D. 31851).

No. 26929.—TOY JEWELRY.—Protests 314550, etc., of Moses Norris et al. (Baltimore). Opinion by Sharretts, G. A.

Protests sustained as to toy jewelry. G. A. 7251 (T. D. 31786) followed.

No. 26930.—IMITATION JET—ARTICLES OF PERSONAL ADORNMENT—ARTICLES OF UTILITY.—Protest 438326 of J. W. Hampton, jr., & Co., and protests 503016, etc., of Oppenheimer-Brussel Importing Co. (New York). Opinions by Sharretts, G. A.

Protests sustained as to imitation jet articles on the authority of United States *v.* Beierle (1 Ct. Cust. Appls., 457; T. D. 31506), and as to smokers' articles and other articles of utility on the authority of G. A. 7129 (T. D. 31089).

No. 26931.—ENAMEL COLORS.—Protests 347702, etc., of O. Hommel Co. (Pittsburgh). Opinion by McClelland, G. A.

Protests sustained as to enamel colors. United States *v.* Marsching (1 Ct. Cust. Appls., 216; T. D. 31257) followed.

No. 26932.—WALRUS LEATHER—ROUGH LEATHER.—Protests 408144, etc., of Greene, Tweed & Co. et al. (New York). Opinion by McClelland, G. A.

Leather classified as not specially provided for under paragraph 451, tariff act of 1909, was claimed to be dutiable as rough leather under the same paragraph. Protests sustained. Abstract 23769 (T. D. 30828) followed.

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No. 26933.—Willow Baskets.—Protests 510322, etc., of Morimura Brothers, and protests 461164, etc., of L. Wertheimber et al. (New York). Opinions by McClelland, G. A.

Protests sustained as to willow baskets on the authority of Brody *v.* United States (T. D. 31573).

No. 26934.—Protests Overruled.—Protest 447125 of White, Son & Co. (Boston), protest 510560 of T. W. Saunders (Buffalo), protests 500789–36853, etc., of Marshall Field & Co. (Chicago), protests 453291, etc., of W. E. Allum et al., protests 415094, etc., of Goodkind & Robinson et al., protest 510306 of Mogi, Momonoi & Co., protests 423540, etc., of P. H. Petry Co., protest 405187 of L. F. Robertson & Sons, protests 410224, etc., of W. H. Stiner & Son et al., protest 509792 of A. L. Tuska Son & Co. (New York), protests 491692, etc., of David Henly's Sons (Philadelphia), protests 505454, etc., of Union Bag & Paper Co. (Plattsburg), and protest 372334 of G. J. Luz (Port Huron), and protest 505502 of C. H. Wyman & Co. (St. Louis). Opinions by McClelland, G. A.

Protests overruled for want of merit.

No. 26935.—Kippered Herring.—Protest 499415 of J. W. Hampton, jr., & Co. (Philadelphia). Opinion by Chamberlain, G. A.

Protests sustained as to kippered herring. United States *v.* Rosenstein (1 Ct. Cust. Appls., 304; T. D. 31357) followed.

No. 26936.—Toy Magic-Lantern Slides.—Protest 497570 of J. J. Buchey & Co. (Philadelphia). Opinion by Chamberlain, G. A.

Toy magic-lantern slides classified as glass slides for magic lanterns under paragraph 107, tariff act of 1909, were claimed to be dutiable as toys (par. 431). Protests sustained on the authority of United States *v.* Borgfeldt (1 Ct. Cust. Appls., 370; T. D. 31455).

No. 26937.—Imitation Onyx.—Protest 490625 of Albert Lorsch & Co. (New York). Opinion by Chamberlain, G. A.

Pieces of paste or glass in imitation of onyx, classified as manufactures of glass or paste under paragraph 109, tariff act of 1909, were claimed to be dutiable as imitation precious stones (par. 449). Protest sustained on the authority of G. A. 7158 (T. D. 31254).

No. 26938.—Imitation Jet.—Protest 450967 of Emrich, King & Schorsch and protest 435192 of Albert Lorsch & Co. (New York). Opinions by Chamberlain, G. A.

Protests sustained as to imitation jet articles on the authority of United States *v.* Beierle (1 Ct. Cust. Appls., 457; T. D. 31506).

No. 26939.—Articles of Personal Adornment—Articles of Utility—Smokers' Articles.—Protests 441312 and 444456, etc., of Emrich, King & Schorsch (New York). Opinions by Chamberlain, G. A.

Mesh bags, coin holders, belt buckles, and smokers' articles, classified as articles of personal adornment under paragraph 448, tariff act of 1909, were held dutiable as smokers' articles (par. 475) or according to their component material of chief value. Protests sustained. G. A. 7129 (T. D. 31089) followed.

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No. 26940.—PROTESTS OVERRULED.—Protest 420058 of Roessler & Hasslacher Chemical Co. (Newport News), protests 506559, etc., of Samuel Mundheim Co. et al., protests 441250, etc., of A. A. Vantine & Co., and protests 435909, etc., of Charles Walter & Son (New York), protest 428691 of C. F. Rumpp & Sons (Philadelphia), and protest 433392 of C. H. Wyman & Co. (St. Louis). Opinions by Chamberlain, G. A.

Protests overruled for want of merit.

BEFORE BOARD 2, OCTOBER 23, 1911.

No. 26941.—PROTESTS DISMISSED.—Protests 491630, etc., of John Bromley & Sons (Philadelphia). Opinion by Fischer, G. A.

Protests dismissed on stipulation between the protestants and the collector of customs.

No. 26942.—PROTESTS OVERRULED.—Protest 447842 of Schoellkopf, Hartford & Hanna Co. (Buffalo), protests 508014–37448, etc., of Mandel Bros. et al. (Chicago), and protests 505505, etc., of Charles H. Wyman & Co. et al. (St. Louis). Opinions by Fischer, G. A.

Protests overruled for want of merit.

No. 26943.—PROTESTS OVERRULED.—Protests 507368, etc., of D. S. Hesse & Bro. et al. (New York). Opinion by Howell, G. A.

Protests overruled for want of merit.

BEFORE BOARD 3, OCTOBER 23, 1911.

No. 26944.—MEDICINAL PREPARATIONS.—Protests 499380, etc., of G. Mulet y Hijos et al. (San Juan). Opinion by Waite, G. A.

A commodity known as "solution leras," classified as a medicinal preparation containing alcohol under paragraph 65, tariff act of 1909, was claimed to be dutiable as a medicinal preparation not specially provided for under the same paragraph. Protests sustained in part.

No. 26945.—PROTESTS OVERRULED.—Protest 511597 of J. S. Nickerson (Eagle Pass) and protests 461736, etc., of L. Alavaine & Co. et al. (New York). Opinions by Waite, G. A.

Protests overruled for want of merit.

BEFORE BOARD 1, OCTOBER 24, 1911.

No. 26946.—ARTICLES OF PERSONAL ADORNMENT—ARTICLES OF UTILITY—SMOKERS' ARTICLES—IMITATION JET—BEADED ARTICLES.—Protests 394654–30942 of Charles D. Stone & Co. (Chicago) and protest 425269 of Abraham & Straus, protests 439909, etc., of C. A. Clark, protest 493242 of E. Dreyfous, protests 419031, etc., and protest 482005 of Hensel, Bruckman & Lorbacher, protest 448412 of Knauth, Nachod & Kuhne, protest 482290 of Lichtenstein Millinery Co., protests 434515, etc., of R. H. Macy & Co., protest 482999 of Oppenheimer-Brussel Importing Co., and protest 473312 of W. H. Stiner & Son (New York). Opinions by Sharretts, G. A.

Cigarette cases and cigar lighters, imitation jet articles, beaded bags, gun-metal mesh bags, and other articles of utility, classified as articles of personal adornment under paragraph 448, tariff act of 1909, were held dutiable as smokers' articles (par.

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475), beaded articles (par. 421), or according to their component material of chief value. Protests sustained. G. A. 7102 (T. D. 30942), G. A. 7103 (T. D. 30943), United States *v.* Beierle (1 Ct. Cust. Appls., 457; T. D. 31506), G. A. 7193 (T. D. 31428), and G. A. 7129 (T. D. 31089) followed.

No. 26947.—Toy Magic-Lantern Slides.—Protest 496497 of George Borgfeldt & Co. (New York). Opinion by Sharretts, G. A.

Toy magic-lantern slides classified as "glass slides for magic lanterns" under paragraph 107, tariff act of 1909, were held dutiable as toys (par. 431), as claimed by the importers. United States *v.* Borgfeldt (1 Ct. Cust. Appls., 370; T. D. 31455) followed.

No. 26948.—Toy Necklaces.—Protest 391723 of Davies, Turner & Co., and protests 386190, etc., of B. Illfelder & Co. et al. (New York). Opinions by Sharretts, G. A.

Protests sustained as to toy necklaces. G. A. 6868 (T. D. 29558) and G. A. 7251 (T. D. 31786) followed.

No. 26949.—Precious Stones, Cut.—Protest 395183 of Goodfriend Bros. (New York). Opinion by Sharretts, G. A.

Pieces of garnet and onyx cut in various forms suitable for use in the manufacture of jewelry, classified as manufactures of garnet and onyx under paragraph 115, tariff act of 1897, were claimed to be dutiable as precious stones, cut (par. 435). Protest sustained on the authority of T. D. 29832.

No. 26950.—Imitation Precious Stones—Egyptian Scarabs.—Protest 392404 of American Bead Co. (New York). Opinion by Sharretts, G. A.

Pieces of glass or paste in the form of Egyptian scarabs and imitating precious stones, not exceeding 1 inch in dimensions, which were classified as manufactures of paste under paragraph 112, tariff act of 1897, were held dutiable as imitation precious stones (par. 435), as claimed by the importers.

No. 26951.—Mirrors in Celluloid Frames.—Protest 457428 of Metropolitan Aluminum Co. (New York). Opinion by Sharretts, G. A.

Protest sustained as to mirrors in celluloid cases. Abstract 26012 (T. D. 31744) followed.

No. 26952.—Glass Rods for Towel Racks.—Protest 419313 of Semon, Bache & Co. (New York). Opinion by Sharretts, G. A.

Molded glass bars for towel racks, the ends of which were slightly ground for the purpose of fitting them into their respective sockets, classified as articles of ground glass under paragraph 98, tariff act of 1909, were claimed to be dutiable as manufactures of glass (par. 109). Protest sustained. G. A. 7076 (T. D. 30824) followed.

No. 26953.—Protests Overruled.—Protests 499896, etc., of Hensel, Bruckman & Lorbacher et al., and protests 448858, etc., of Massce & Co. et al. (New York). Opinions by Sharretts, G. A.

Protests overruled for want of merit.

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BEFORE BOARD 2, OCTOBER 24, 1911.

No. 26954.—CYLINDRICAL METAL CONTAINERS.—Protests 408236, etc., of A. Klipstein & Co. et al. (Baltimore), protests 507003, etc., of Hammill & Gillespie, and protests 424772, etc., of Innis, Spieden & Co. (New York), and protest 449024 of A. Klipstein & Co. (Savannah). Opinions by Fischer, G. A.

Round tins and thin sheet-metal drums containing various chemicals such as bleaching powder, chloride of lime, chloride of zinc, caustic acid, caustic potash, and chloride of magnesium, classified as cylindrical or tubular vessels under paragraph 151, tariff act of 1909, were claimed to be free of duty as the usual containers of merchandise free of duty or subject to specific duty, or dutiable at the rates applicable to their contents. Protests sustained. United States *v.* Braun (T. D. 31596) followed.

No. 26955.—SCRAP ALBUMS—PENMANSHIP BOOKS—BOOKS MORE THAN 20 YEARS OLD.—Protest 540914–40526 of C. L. Ricketts (Chicago).

FISCHER, *General Appraiser:* The articles in question are invoiced as a collection of books on penmanship, printed during the sixteenth, seventeenth, and eighteenth centuries, in 20 volumes. The collector assessed duty thereon at the rate of 35 per cent ad valorem under the provisions of paragraph 417, tariff act of 1909, as scrap albums, and the said merchandise is claimed free of duty under paragraph 517, as books "printed more than twenty years at the date of importation."

It appears from the record that the books are a bound collection of old penmanship copies dated from 1539 to 1843, of Italian, German, Spanish, and English copy books. The printed matter is arranged in bound form in the same way as it originally appeared in the copy book, and is in consecutive order. They have been bound uniformly in large volumes for the purpose of convenience and for preservation. A volume, No. 5, is an exhibit in the case and it is entitled "Penmanship by Eminent Writing Masters." The date of publication as shown by the said volume is 1850. There appears to be no question that if these old copy books had arrived as a separate and distinct collection, the fact that they were in unbound form would not have robbed them of their character as books, and the manner of their binding, either by inlaying or mounting the original leaves on heavier paper, does not, as we view the issue, change their status. The articles are books, and are printed books over 20 years old. The protest is sustained, and the decision of the collector is reversed.

No. 26956.—COATED-WIRE ARTICLES—FALSE REEDS.—Protest 477481 of William H. Stiner & Son (New York). Opinion by Fischer, G. A.

False reeds classified as wire heddles or healds under paragraph 135, tariff act of 1909, were claimed to be dutiable under the provision in the same paragraph relating to coated-wire articles. Protest sustained. Abstract 25887 (T. D. 31708) followed.

No. 26957.—MACHINES FOR SEWING KNITTED GOODS—SEWING MACHINES.—Protests 480938, etc., of E. O. Spindler (New York). Opinion by Fischer, G. A.

Protests sustained as to machines for sewing knitted goods. Abstract 26815 (T. D. 31912) followed.

No. 26958.—PROTESTS OVERRULED.—Protests 511111, etc., of United States Zinc Co. (Denver), protests 508998, etc., of Altoona Zinc Works et al. (Kansas City), protests 454695, etc., of Philip Bauer & Co. (New York), protests 508369, etc., of American Smelting & Refining Co. (Perth Amboy), protests 408055, etc., of Farbenfabriken of Elberfeld Co. et al., protest 510638 of Philip Halzell, and protests 519837, etc., of O. G. Hempstead & Son (Philadelphia), protests 442726, etc., of Guy G. Major (Toledo), and protests 505460, etc., of E. I. Du Pont de Nemours Powder Co., and protest 504846 of Mineral Products Manufacturing Co. (Wilmington). Opinions by Fischer, G. A.

Protests overruled for want of merit.

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BEFORE BOARD 1, OCTOBER 25, 1911.

No. 26959.—ARTICLES OF PERSONAL ADORNMENT—ARTICLES OF UTILITY—SMOKERS' ARTICLES—IMITATION JET.—Protests 477326, etc., of H. Bischoff & Co., protest 483536 of S. Cottle & Co., protest 469499 of Davies, Turner & Co., and protests 431004, etc., of Knauth, Nachod & Kuhne et al. (New York). Opinions by Sharretts, G. A.

Cigar lighters, cigarette cases, hatpins, brooches, gun-metal mesh bags, vanity cases, match boxes, coin holders, and brass cases with ink pads, classified as articles of personal adornment under paragraph 448, tariff act of 1909, were claimed to be dutiable as smokers' articles (par. 475), or according to their component material of chief value. Protests sustained. T. D. 30785, G. A. 7103 (T. D. 30943), G. A. 7102 (T. D. 30942), G. A. 7019 (T. D. 30612), United States *v.* Beierle (1 Ct. Cust. Appls., 457; T. D. 31506), and G. A. 7129 (T. D. 31089) followed.

No. 26960.—PARTS OF MUSICAL INSTRUMENTS—UNFINISHED VIOLIN NECKS.—Protest 499842 of C. Fischer (New York). Opinion by Sharretts, G. A.

Protests sustained as to unfinished violin necks. G. A. 7247 (T. D. 31755) followed.

No. 26961.—IMITATION JET—HATPIN TOPS—IMITATION PRECIOUS STONES.—Protests 485788, etc., of A. J. Hague & Co. (New York). Opinion by Sharretts, G. A.

Hatpin tops of paste, not imitating jet, classified as manufactures of paste under paragraph 109, tariff act of 1909, were held dutiable as imitation precious stones (par. 449). Protests sustained. G. A. 7267 (T. D. 31844) followed. The board sustained a further claim that imitation jet articles were dutiable as manufactures of paste on the authority of United States *v.* Beierle (1 Ct. Cust. Appls., 457; T. D. 31506).

No. 26962.—TOY MIRRORS—GROTESQUE MIRRORS.—Protest 504541 of Butler Bros., and protest 423828 of Adolph Strauss & Co. (New York). Opinions by Sharretts, G. A.

Small circular mirrors with metal frames and small mirrors with convex or irregular surfaces which distort the features of a person looking into them, sometimes called "grotesque mirrors," classified as mirrors under paragraph 109, tariff act of 1909, were claimed to be dutiable as toys (par. 431). Protests sustained. Abstract 23161 (T. D. 30585) and Abstract 2101 (T. D. 25444) followed.

No. 26963.—PROTESTS OVERRULED.—Protest 483287-36478 of G. W. Sheldon & Co. (Chicago), and protests 327019, etc., of Mogi, Momonoi & Co. et al. (New York). Opinions by Sharretts, G. A.

Protests overruled for want of merit.

No. 26964.—WILLOW BASKETS.—Protest 519307 of George Borgfeldt & Co. (Boston). Opinion by McClelland, G. A.

Protest sustained as to willow baskets. Brody *v.* United States (T. D. 31573) followed.

No. 26965.—PROTESTS OVERRULED.—Protests 508076-37769, etc., of De Boer & Dik et al. (Chicago), and protests 332217, etc., of G. P. Calogera et al. (New York). Opinions by Chamberlain, G. A.

Protests overruled for want of merit.

BEFORE BOARD 2, OCTOBER 25, 1911.

No. 26966.—COPYING PAPER.—Protest 493687-35916 of G. W. Sheldon & Co. (Chicago). Opinion by Fischer, G. A.

The board found that copying paper classified as weighing under 6 pounds to the ream weighed over 6 pounds and less than 10 pounds to the ream, as claimed by the importers.

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No. 26967.—Supercalendered and Embossed Grease-Proof Paper.—Protests 505076, etc., of Adolf Kraut et al. (New York). Opinion by Fischer, G. A.

Protests sustained as to supercalendered and embossed grease-proof paper. G. A. 7136 (T. D. 31133) followed.

No. 26968.—Horsehair Hats.—Protests 165172, etc., of Isler & Guye et al. (New York). Opinion by Howell, G. A.

Trimmed and untrimmed hats composed in chief value of horsehair and classified under paragraph 390, tariff act of 1897, as silk wearing apparel by similitude, were claimed to be dutiable as trimmed and untrimmed straw hats by similitude (par. 409). Protests sustained. United States *v.* Rheims (175 Fed. Rep., 778; T. D. 30226) followed.

No. 26969.—Malines Nets.—Protests 490705, etc., of C. B. Richard & Co., and protest 491004 of Wertheimer & Bros. (New York). Opinions by Howell, G. A.

Protests sustained as to Malines nets on the authority of Abstract 24701 (T. D. 31255).

No. 26970.—Protests Overruled.—Protests 493072, etc., of B. Altman & Co. et al., protests 481527, etc., of L. Erstein & Bro. et al., protests 507449, etc., of Isler & Guye et al., protests 506055, etc., of Lichtenstein Millinery Co., protests 505179, etc., of E. Mommer et al., protests 445852, etc., of Schwarzenbach, Huber & Co. et al., and protests 422423, etc., of G. Sidenberg & Co. et al. (New York), and protests 505507, etc., of Charles H. Wyman & Co. et al. (St. Louis). Opinions by Howell, G. A.

Protests overruled for want of merit.

No. 26971.—Brattice Cloth.—Protests 451542, etc., of Kern Commercial Co. (New York). Opinion by Cooper, G. A.

Brattice cloth was held dutiable as plain woven fabrics of single jute yarns under paragraph 352, tariff act of 1909, as claimed by the importers, rather than as manufactures of jute (par. 358), as assessed. G. A. 7104 (T. D. 30967) followed.

No. 26972.—Scalloped Articles.—Protest 422668 of G. W. Sheldon & Co. (New York). Opinion by Cooper, G. A.

Protest sustained as to scalloped articles. Note G. A. 6966 (T. D. 30271).

No. 26973.—Unbleached Cotton Cloth.—Protest 466989 of Mills & Gibb (New York). Opinion by Cooper, G. A.

The board sustained the importers' claim that certain cotton cloth assessed as colored is dutiable as unbleached.

No. 26974.—Protests Overruled.—Protests 506206, etc., of John R. Ainsley & Co. et al. (Boston), and protest 457773-35481 of T. Buettner & Co. (Chicago). Opinions by Cooper, G. A.

Protests overruled for want of merit.

Before Board 3, October 25, 1911.

No. 26975.—Sausage—Bologna—Mortadella—Salame.—Protests 473184, etc., of L. Gandolfi & Co. et al. (New York).

Waite, *General Appraiser:* The merchandise imported in these cases is sausage. Some of it was imported under the law of 1897 and some under the law of 1909. It has been assessed under paragraph 275, tariff act of 1897 and paragraph 286, act of 1909, both of which provide for "meats of all kinds, prepared or preserved." It is claimed to be free of duty as "sausages, bologna," under paragraphs 655 and 667 of the acts of 1897 and 1909, respectively. The provision under the two acts is identi-

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cal; hence the question, and the only question to be decided, is whether this sausage is bologna sausage such as is intended to be covered by the provisions in the two acts.

The commodity in these cases is sliced and placed in semicircular tins containing about two thin slices of sausage. An inspection of the sample shows that the slices are immersed in grease or fat of some kind. The tin covering seems to be a very elaborate and expensive covering for the quantity and style of the commodity. This sausage was imported from Italy. It is a cured product, made of beef and pork, sometimes one predominating in quantity and sometimes the other. Considerable testimony has been taken. That on the part of the importers shows the sausage is made in and about the city of Bologna, and is sold as "mortadella" and "salame," and those terms are construed by the importers' witnesses, and in the trade with which they are familiar, as meaning bologna sausage. We gather from the testimony that it is so considered because it is made in Bologna. This board has expressed its views with reference to what bologna saugage is, and has had occasion to pass on these two commodities, holding in Abstract 15546 (T. D. 28205) that mortadella was not bologna as described in the statute, and in the case of Vitelli & Son, G. A. 6371 (T. D. 27361), that salame was not bologna.

It appears from the testimony produced in these cases by the Government that there is in the United States, and has been since and previous to the enactment of the law of 1897, a commodity well known as "bologna sausage." It does not conform to the description of the merchandise before us. This testimony is positive and based upon wide experience in the trade and in the manufacture of meat products. Hence we are unable to find from the testimony in these cases that there has been shown a commercial designation which would warrant us in holding that these goods are bologna sausages. The protests are therefore overruled, affirming the finding of the collector.

BEFORE BOARD 1, OCTOBER 27, 1911.

No. 26976.—PROTESTS ABANDONED.—Protests 212808, etc., of Michael Strauss et al. (New York). Opinion by Sharretts, G. A.

Protests abandoned.

No. 26977.—ORANGE OIL—ESSENTIAL OIL.—Protests 411424, etc., of Mulhens & Kropff et al. (New York). Opinion by McClelland, G. A.

Orange oil, classified as fruit oil under paragraph 21, tariff act of 1909, was claimed to be dutiable as essential oil (par. 3). Protests sustained. G. A. 7239 (T. D. 31718) followed.

No. 26978.—PROTESTS OVERRULED.—Protests 350534, etc., of H. Bischoff & Co. et al., protests 296464, etc., of D. S. Hesse & Bro., and protests 418694, etc., of Hongkong & Shanghai Banking Co. et al. (New York). Opinions by McClelland, G. A

Protests overruled for want of merit.

BEFORE BOARD 2, OCTOBER 27, 1911.

No. 26979.—PROTESTS OVERRULED.—Protests 411383, etc., of Edward Hill's Son & Co. et al., and protests 424872, etc., of C. H. Pettengill et al. (New York), and protests 400662, etc., of C. H. Wyman & Co. et al. (St. Louis and New York). Opinions by Fischer, G. A.

Protests overruled for want of merit.

No. 26980.—MALINES NETS.—Protests 505077, etc., of J. Kridel Sons & Co. et al. (New York). Opinion by Howell, G. A.

Protests sustained as to Malines nets on the authority of Abstract 24701 (T. D. 31255).

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No. 26981.—JACQUARD FIGURED GOODS.—Protest 419826 of Theodore Kauffeld (New York). Opinion by Howell, G. A.

The board held that certain goods were dutiable as Jacquard figured goods in the piece under paragraph 391, tariff act of 1897, rather than as woven fabrics in chief value of silk (par. 387). Protest sustained.

No. 26982.—PROTESTS OVERRULED.—Protests 504906, etc., of Burr & Hardwick et al., protests 424284, etc., and 506877, etc., of H. B. Claflin Co. et al., protests 432786, etc., of Judkins & McCormick Co. et al., protests 404809, etc., of Poirier & Lindeman et al., and protests 406571, etc., of C. B. Richard & Co. et al. (New York). Opinions by Howell, G. A.

Protests overruled for want of merit.

No. 26983.—CHINESE SHOES.—Protests 319027, etc., of Soy Kee & Co. et al. (New York). Opinion by Cooper, G. A.

Chinese shoes classified under various paragraphs as wearing apparel were claimed to be dutiable as leather shoes under paragraph 438, tariff act of 1897. Protests sustained in part. G. A. 6874 (T. D. 29595) followed.

No. 26984.—PROTESTS OVERRULED.—Protests 432827, etc., of Stern Bros. et al (New York). Opinion by Cooper, G. A.

Protests overruled for want of merit.

BEFORE BOARD 3, OCTOBER 27, 1911.

No. 26985.—PROTESTS OVERRULED.—Protests 363773, etc., of Wo On & Co. et al. (New York). Opinion by Waite, G. A.

Protests overruled for want of merit.

(T. D. 31972.)

Handmade paper.

AMERICAN TRADING CO. *v.* UNITED STATES (No. 99).

1. HANDMADE PRINTING PAPER SUITABLE FOR BOOKS.

The term "handmade" as applied to paper is precise, explicit, specific, and controlling, and since the handmade paper of the importation weighed 10 pounds to the ream, it was dutiable under paragraph 401, tariff act of 1897.—Benneche & Bro. *v.* United States (153 Fed. Rep., 861).

2. EFFECT OF DEPARTMENTAL PRACTICE.

Even if the evidence showed, as it does not, that the practice of the Treasury Department had been contrary to the ruling now made, the reason for invoking departmental practice as binding is not found here; the provisions of the statute under consideration are not of doubtful construction.

United States Court of Customs Appeals, October 16, 1911.

TRANSFERRED from United States Circuit Court for Southern District of New York, Abstract 20115 (T. D. 29429).

[Decision affirmed.]

Comstock & Washburn (*Albert H. Washburn* of counsel) for appellant.

D. Frank Lloyd, Assistant Attorney General (*Martin P. Baldwin* on the brief), for the United States.

Before MONTGOMERY, SMITH, BARBER, and MARTIN, Judges.

BARBER, Judge, delivered the opinion of the court:

The merchandise involved in this case is concededly handmade paper weighing over 10 pounds to the ream. The appellant claims

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and the board found that it is also printing paper suitable for books. This is not denied by the United States.

The sole question is whether this paper is dutiable under paragraph 396 or under paragraph 401 of the tariff act of July 24, 1897. We insert here the material part of each paragraph.

396. Printing paper, unsized, sized or glued, suitable for books and newspapers, * * *.

401. Writing, letter, note, hand-made, drawing, ledger, bond, record, tablet, and typewriter paper, weighing not less than ten pounds and not more than fifteen pounds to the ream, * * * but if any such paper is ruled, bordered, embossed, printed, or decorated in any manner, it shall pay ten per centum ad valorem in addition * * *.

The collector and the Board of General Appraisers agreed that this paper was dutiable under paragraph 401.

It is clear that being printing paper suitable for books it is included within the provisions of paragraph 396, and also being handmade paper it is equally clear that it is within the provisions of paragraph 401. Under these circumstances, to use the language of the Supreme Court in Fink *v.* United States (170 U. S., 584)—

The question is, which, if either of the two (paragraphs), is so dominant in its control of the article in question as to exclude the operation of the other. The rule is that this, if possible, is to be determined by ascertaining whether one of the two paragraphs is more definite in its application to the article in question than the other.

The term "handmade" as applying to paper first appeared in the tariff act of 1897.

It is obvious, having regard to method of production, that all papers will fall within one of two classifications, namely, machine made or handmade, unless possibly it may be said that some papers are partially machine and partially hand made, but this question is not involved here, and it would seem that the handmade article must constitute but a small part of the entire paper product.

Congress is presumed to have had in mind that paper was divisible into these two classes and to have used the term "handmade" as applicable to all kinds of paper made by hand, unless when referring thereto some words of limitation, extension, or exclusion were also used in the same connection.

The term "handmade" as applied to paper is, we think, precise, explicit, specific, and controlling in this case. The word is used without any modifying language, except as to the weight per ream, and nothing else is found in the paragraph to suggest that any kind or class of handmade paper shall be exempted from its provisions.

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Indeed, as was said by the Circuit Court of Appeals in Benneche & Bro. *v* United States (153 Fed. Rep., 861), Congress had in mind that the handmade paper might be suitable for printing or might be printed upon, because the same paragraph provides that if any such paper is printed in any manner it shall pay an additional rate of duty. But independent of this, we are clear that the words "handmade paper" more specifically describe the importation in question than does the term "printing paper, unsized, sized, or glued, suitable for books and newspapers" in paragraph 396. It is a specific designation from the standpoint of original manufacture.

No question of commercial designation is made in the case here. The paper is "handmade," that is, made by hand, and the record shows that it is made from a vegetable fiber obtained from the bark of certain trees in Japan. Whatever may be its uses, we think Congress intended, if it was of the weight described in paragraph 401, that it should pay the duty therein made chargeable upon paper made by hand.

While this conclusion seems to be the only natural one to be reached upon a reading of the two paragraphs in question, it is also supported by authority. United States *v.* Davies, Turner & Co. (177 Fed. Rep., 371); Benneche & Bro. *v.* United States (153 Fed. Rep., 61); United States *v.* Seyd (158 Fed. Rep., 408).

We are not unmindful of the case of Miller, Sloane & Wright *v.* United States (128 Fed. Rep., 469), and the same case in 135 Federal Reporter, 349, which are some authority for the appellant's contention here. We think, however, that notwithstanding these cases the later ones to which we have first above referred have so far impaired their effect that if we felt bound to regard either as a precedent we should follow those first above cited. Independent of the authority, however, of any of these cases our conclusion is that the construction we have above indicated is the one which should be adopted in this case.

With reference to the appellant's claim as to the effect of the departmental practice in the construction of these paragraphs, as relates to handmade paper, it is sufficient to say, first, that no reason applies for its application here because we do not find the provisions of the statute under consideration of doubtful construction, and also because the facts in the case here show that there has been no such uniform, long continued, and uninterrupted construction of the statute favorable to the appellant's claim as would render it effective here.

The result is that the judgment of the Board of General Appraisers is *affirmed.*

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(T. D. 31973.)

Pro forma invoice.

UNITED STATES *v.* FRANK & LAMBERT (No. 115).

PRO FORMA INVOICE INDORSED "APPROVED" BY APPRAISER.

The importers entered the goods upon affidavit and statement in the form of an invoice, giving bond as required by law. The collector sent this pro forma invoice to the appraiser, and upon the report of the assistant appraiser there appeared the words "Approved, E. S. Fowler, appraiser." Later the importers filed a consular invoice to cancel their bond, and in an accompanying verified statement asserted the incorrectness of the pro forma invoice, but made no application for reappraisement. The entry was liquidated on the basis of the value as given in the pro forma invoice. *Held*, the indorsement of "approved" by the appraiser shows a compliance with the requirement that he should ascertain, estimate, and appraise the actual market value of the merchandise and make a report thereon; furthermore, to hold thus is in accord with the regulations and practice in respect of pro forma invoices.—United States *v.* Bennett & Loewenthal, *infra* (T. D. 31975).

United States Court of Customs Appeals, October 16, 1911.

TRANSFERRED from United States Circuit Court for Southern District of New York, Abstract 21027 (T. D. 29690).

[Decision reversed.]

D. Frank Lloyd, Assistant Attorney General (*Charles E. McNabb* on the brief), for the United States.

Curie, Smith & Maxwell (*Thomas M. Lane* of counsel) for appellees.

Before MONTGOMERY, HUNT, SMITH, BARBER, and DE VRIES, Judges.

HUNT, Judge, delivered the opinion of the court:

The United States appeals from a decision of the Board of General Appraisers sustaining the protest of the importers, appellees, against the assessment of duties by the collector of customs at New York on the value stated in a pro forma invoice made in 1907 and covering certain cotton goods. It appears that Frank & Lambert, the importers, having no consular invoice at the time of entry, made entry upon affidavit and statement in the form of an invoice, as permitted by section 4 of the customs administrative act of 1890, and gave bond in the penal sum of $300, as required by said section. In the statement and affidavit, which is called a pro forma invoice, the importers stated the price of the cotton as follows: 1,978 yards at 4¾d., 389 yards at 7d. On October 23, 1907, the collector sent the pro forma invoice to the appraiser. Upon the report of the assistant appraiser there appear the words "Approved, E. S. Fowler, appraiser." On January 25, 1908, the importers filed a consular invoice to cancel their bond, accompanying the invoice with an application, submitting that their bond was entitled to cancellation upon the ground that the pro forma invoice used on entry was made out erroneously by the shipping clerk in London, the pro forma invoice prices of 1,978 yards at 4¾d. and 389 yards at 7d. being erroneous in that the correct prices as ordered were 1,978 yards at

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4½d. and 389 yards at 6½d. The application, which was verified, contained the statement by the importers that they were confident that the appraiser, if requested, would report the consular prices to be correct. The collector appears to have taken no action upon this verified letter or application, but on February 10, 1908, liquidated the entry upon the basis of the pro forma invoice value.

The importers made no application for a reappraisement, but on February 20, 1908, filed a protest based upon the ground that the prices stated in the pro forma invoice were inaccurate through clerical error. The Board of General Appraisers sustained the protest for the reason that the value as entered on the pro forma invoice having been marked "Approved" by the appraiser did not indicate any regular appraisement of the merchandise, and upon the further ground that inasmuch as the consular invoice, which stated a lower value, was furnished to the collector prior to the liquidation of the entry, it was the duty of the collector to reliquidate the entry on the basis of the values as stated in the consular invoice.

The case is now before us upon the principal contention that the board erred because duty was properly assessed upon the value as stated in the pro forma invoice, and that the appraiser's return made on the pro forma invoice was the appraisement of the merchandise, and became final and conclusive against the importers, under section 13 of the act of June 10, 1890.

The pertinent provisions of the act of June 10, 1890, are as follows:

SEC. 4. That, except in case of personal effects accompanying the passenger, no importation of any merchandise exceeding one hundred dollars in dutiable value shall be admitted to entry without the production of a duly-certified invoice thereof as required by law, or of an affidavit made by the owner, importer, or consignee, before the collector or his deputy, showing why it is impracticable to produce such invoice; and no entry shall be made in the absence of a certified invoice, upon affidavit as aforesaid, unless such affidavit be accompanied by a statement in the form of an invoice, or otherwise, showing the actual cost of such merchandise, if purchased, or if obtained otherwise than by purchase, the actual market value or wholesale price thereof at the time of exportation to the United States, in the principal markets of the country from which the same has been imported; which statement shall be verified by the oath of the owner, importer, consignee, or agent desiring to make entry of the merchandise, to be administered by the collector or his deputy, and it shall be lawful for the collector or his deputy to examine the deponent under oath touching the sources of his knowledge, information, or belief in the premises, and to require him to produce any letter, paper, or statement of account, in his possession, or under his control, which may assist the officers of customs in ascertaining the actual value of the importation or any part thereof; and in default of such production when so requested, such owner, importer, consignee, or agent shall be thereafter debarred from producing any such letter, paper, or statement for the purpose of avoiding any additional duty, penalty, or forfeiture incurred under this act, unless he shall show to the satisfaction of the court or the officers of the customs, as the case may be, that it was not in his power to produce the same when so demanded; and no merchandise shall be admitted to entry under the provisions of this section unless the collector shall be satisfied that the failure to produce a duly certified invoice is due to causes

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beyond the control of the owner, consignee, or agent thereof. * * * And when entry of merchandise exceeding one hundred dollars in value is made by a statement in the form of an invoice the collector shall require a bond for the production of a duly certified invoice.

SEC. 5. That whenever merchandise imported into the United States is entered by invoice, one of the following declarations, according to the nature of the case, shall be filed with the collector of the port, at the time of entry by the owner, importer, consignee, or agent; which declaration so filed shall be duly signed by the owner, importer, consignee, or agent, * * *.

SEC. 7. That the owner, consignee, or agent of any imported merchandise which has been actually purchased may, at the time when he shall make and verify his written entry of such merchandise, but not afterwards, make such addition in the entry to the cost or value given in the invoice or pro forma invoice or statement in form of an invoice, which he shall produce with his entry, as in his opinion may raise the same to the actual market value or wholesale price of such merchandise at the time of exportation to the United States, in the principal markets of the country from which the same has been imported; * * * *And provided further*, That all additional duties, penalties or forfeitures applicable to merchandise entered by a duly certified invoice, shall be alike applicable to merchandise entered by a pro forma invoice or statement in the form of an invoice. * * * The duty shall not, however, be assessed in any case upon an amount less than the invoice or entered value.

SEC. 10. That it shall be the duty of the appraisers of the United States, and every of them, and every person who shall act as such appraiser, or of the collector, as the case may be, by all reasonable ways and means in his or their power to ascertain, estimate, and appraise (any invoice or affidavit thereto or statement of cost, or of cost of production to the contrary notwithstanding) the actual market value and wholesale price of the merchandise at the time of exportation to the United States, in the principal markets of the country whence the same has been imported, and the number of yards, parcels, or quantities, and actual market value or wholesale price of every of them, as the case may require.

SEC. 13. That the appraiser shall revise and correct the reports of the assistant appraisers as he may judge proper, and the appraiser, * * * shall report to the collector his decision as to the value of the merchandise appraised. * * * If * * * the importer, * * * shall be dissatisfied with the appraisement * * *, and shall have complied with the requirements of law with respect to the entry and appraisement of merchandise, he may, within two days thereafter give notice to the collector, in writing, of such dissatisfaction, on the receipt of which the collector shall at once direct a reappraisement of such merchandise by one of the general appraisers. The decision of the appraiser * * * (in cases where no objection is made thereto, either by the collector or by the importer, owner, consignee, or agent), * * * shall be final and conclusive as to the dutiable value of such merchandise against all parties interested therein, * * *.

Certain matters become relevant and must be accepted as essentials in the administration of the customs laws. It is plain that under the provisions of the customs administrative act the appraiser is required to "ascertain, estimate, and appraise (any invoice or affidavit thereto or statement of cost, or of cost of production to the contrary notwithstanding) the actual market value" of the merchandise, and thereafter to "report to the collector his decision as to the value of the merchandise appraised." (Secs. 10 and 13 of said act.) It is equally clear that the duty of the appraiser is to make careful examination and to appraise the goods at the actual market value and to indorse

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these facts upon the invoice and to sign the same. (Art. 1246, Customs Regulations of 1899.). Proceeding, therefore, upon the assumption that compliance with these requirements is indispensable to a valid appraisement, we advance at once to the inquiry whether the record in the present case shows affirmatively that such necessary steps were taken or whether, in the absence of such a showing, there is yet a record which is so far aided by legal presumptions which attend it as to compel the conclusion that there was a valid appraisement and a sufficient report thereof. It is well to bear in mind that we are not called upon to consider a case of omission of any action by the appraiser or collector, for it is conceded the pro forma invoice was before such officials, and that they did act thereon to an extent, the former by stamping the word "approved," together with his name, upon the invoice, and by thereafter returning such stamped invoice to the collector; the latter by liquidating the entry.

Now, the purpose of the statutes which allow an importer to make a pro forma invoice is undoubtedly to enable him to obtain immediate possession of his merchandise. Obviously, this right to such possession is often of vital commercial importance to an importer; hence it would seem that in order to maintain the full enjoyment of the right, the policy of the statute being in aid of facility of importation entry, should be sustained by liberal rather than narrow construction. But on the other hand, official action by a customs officer is presumed to be regularly and lawfully had; and the force of this presumption is not to be passed over lightly, but to be regarded as always present and necessary to be considered when the acts of customs officials are assailed. As was said by Justice Hunt in Arthur *v.* Unkart (96 U. S., 118):

> * * * These officers are, however, selected by law for the express purpose of deciding these questions; they are appointed and required to pronounce a judgment in each case; and the conduct, management, and operation of the revenue system seem to require that their decisions should carry with them the presumption of correctness. This rule is not only wise and prudent, but is in accordance with the general principle of law that an officer acting in the discharge of his duty, upon the subject over which jurisdiction is given to him, is presumed to have acted rightly.

As the corollary of this doctrine, one who would set aside the acts of such officials must assume the burden of proving that in fact or law error has been committed.

The importers say that the word "approved" appearing upon the invoice over the name of the appraiser means nothing, and that "no appraisement, or at least no legally reported appraisement, was made of the merchandise in this case." Offering no testimony other than the papers themselves, they assume the position that there is no presumption of legal action by the appraiser "because he has not acted at all or at least has not registered his action so that the presumption can attach." Looking into this position, we find that it contains two

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propositions—one, that there never was action; another, that there was action, but that there is no competent evidence thereof, and that therefore the case is to be regarded as if there were no action at all. The statement of these elements demonstrates that they are separate, and lest confusion of them be had, it is well to refer briefly to each.

An appraisement is the act of determining the value, while the report of the appraisement is the written evidence of the performance of such determination. The methods of actually making the appraisement, the means to be used by the appraiser in ascertaining, estimating, and arriving at actual market values, must be employed antecedent to the report. They are the predicates for the report. An appraiser may have samples before him; he may have the report of the deputy appraiser; he may himself have extensive knowledge of the merchandise under consideration; and he may apply all or any of these qualifications in the processes of thought by which he forms his conclusion. Yet none are matters which need be written down, and indeed they could not well be recorded, when we consider the imperative need for that expedition which must prevail in custom-house administration. The appraiser is merely called upon to write the ultimate facts found, namely, the actual market values of the merchandise imported. It would seem to follow as a consequence of these views that, in the absence of an express requirement that the appraiser shall write out such preliminary findings or facts or reasons for his ultimate facts, when he has written down the values he has completed his appraisement, and at once the law surrounds his act by the presumption that every essential antecedent step has been taken.

And as the importers have made no showing of fraud, or that the action of the officials was upon a fundamentally erroneous principle, the case is one for the application of the rule laid down by us in Wolff *v.* United States (1 Ct. Cust. Appls., 181; T. D. 31217), in that the record, together with the presumptions in favor of the appraisement, are proofs which sustain the action had, provided the appraiser made a report to the collector of his decision as to the value of the merchandise appraised.

Thus we are brought to the second element of the proposition, the point that there was no legal report of appraisement. The pro forma invoice, upon which the word "approved" appeared was for all purposes of entry the invoice. It became the statement upon which the importers made their case and availed themselves of the right to obtain possession of their goods. The statements therein were sworn to and became binding upon those who made them, subject always to the provisions of law as provided for in sections 4 and 7 of the law already cited. But we need not consider the qualifying provisions at this time, because they do not affect the language which makes it the duty of the appraiser to proceed upon the pro forma invoice, and to revise and correct the report of the assistant

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appraiser as he judges proper, and then to make his decision and to report to the collector the value as decided. The form of the report of the decision as to value is not prescribed by law, and while it might be well, from an administrative point of view, to have a uniformity of words in the expression of the action of the appraiser and for his report, still, if the record shows that action has been had and what it was, such record should be deemed a sufficient report to the collector, even though the language is not as full as might be. We think, too, in the absence of evidence tending to show some omission to do what the law required the appraiser to do, that the word "approved," appearing upon the report of the assistant appraiser over the signature of the appraiser, is, in effect, a statement that the appraiser has adopted as his own the acts and findings of the assistant appraiser and that he has made them his ascertainment, estimate, and appraisement of actual market value of the merchandise. So here, the appraiser having made his decision, the paper with the writing became an account of the transaction, which, when transmitted, became a valid report to the collector.

If the importers had requested reappraisement, further inquiry might be necessary, but in the absence of an application for such relief the facts make the case one where the decision of the appraiser is final and not subject to review.

Appellees urge that the pro forma invoice was erroneously made out by the shipping clerk in London and that therefore the duty of the collector was to withhold such pro forma invoice from appraisement. We readily assent to the view that where a mere clerical error has been made and seasonable effort to correct such error is had every consideration of justice between the importer and the Government calls for rectification. But the record contains no evidence of such a mistake, unless it is to be inferred from the statement contained in the letter of the importers, dated January 25, 1908, addressed to the collector. It may be granted that the letter asserts that the importers made a slight error of fact in the statement of the value of their goods when they entered them upon pro forma invoice. They valued their goods at a little more than they cost. But the statement of value was apparently made with care and fails to show either manifest clerical error or such mistake as appeals for remedy within the spirit or letter of section 24 of the act of June 10, 1890, which authorizes correction of "manifest clerical errors in any entry or liquidation for or against the United States at any time within one year of the date of such entry, but not afterwards." The importers cite the case of United States *v.* Muller, Maclean & Co. (158 Fed. Rep., 405), but that was one where undisputed evidence showed that a rupee mark was mistaken for a dollar mark, and the court very naturally held that such a pure mistake authorized correction. The case well illustrates what is meant by manifest clerical error.

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United States *v.* Muller, Maclean & Co. (152 Fed. Rep., 575), affirmed in 158 Federal Reporter, 405, was a case where testimony was heard and it was made to appear that the appraising officer did not perform the duty imposed upon him by law, and because of such total failure the court held that there was no appraisement and that the importer was entitled to relief by the appraisement of duty upon the consular invoice rather than upon the pro forma invoice.

Another aspect of the case should be mentioned. Examination of the practice that has prevailed in the administration of customs laws shows that pro forma invoices have for years constituted the bases upon which the appraisement of merchandise has been had. The act of March 1, 1823, provided for entry by appraisement in the absence of an invoice; so did the act of March 3, 1863, section 2858, Revised Statutes United States. The act of June 22, 1874, sections 9, 10, and 11 (18 Stat., 188), made specific provision for entry on pro forma invoices. Frequent construction of the act of 1874, just referred to, as well as of the authority conferred in preceding acts, leads us to hold that the better rule is that where imports have been entered by appraisement in the absence of an invoice and the value of the invoice afterwards produced is less than that found by the appraisers on the entry, no allowance by return of duty can be made for the difference, but if the invoice shows a greater value than that ascertained by the appraisement, the United States will be entitled to duties on such excess of value. (See regulations of 1857, art. 360, and 1874, art. 341.) Thus, it was provided by the regulations of 1884, article 329, that—

> Where imports have been entered on affidavit and statement, in the absence of an invoice, and the value in the invoice afterwards produced is less than that found by the appraisers on the entry, no allowance by return of duties can be made for the difference. But if the invoice shows a value greater than that ascertained by the appraisement the United States will be entitled to duties on such excess of value. (R. S., 2900.)

We find, too, that the regulations of 1892, article 285; 1899, article 394; and 1908, article 182, provided as follows:

> When the certified invoice is received, it must be compared with the entry, and any duty remaining due must be collected. The provisions of the law regarding penalties for undervaluation are alike applicable to pro forma invoices, but no refund of duty shall be made because a certified invoice exhibits a lower value than that shown by the pro forma invoice.

These rulings and regulations show that the conclusions which we have reached are in harmony with the practice which has long been applied to cases where the value given in the pro forma invoice has been somewhat higher than that included in the consular invoice subsequently received.

It is true that the opinion of the Board of General Appraisers, adopted by the Circuit Court in United States *v.* Commercial Cable

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Co. (141 Fed. Rep., 473), was to the effect that an entry made on a pro forma invoice remains open until the conditions of the bond for the production of the consular invoice have been fulfilled or the bond forfeited, and that when the consular invoice is duly produced and approved by the appraiser the entry should be liquidated on the basis of the consular and not the pro forma invoice. But we are constrained to hold that where, as here, the certified invoice is produced after appraisement, and where, as here, no reappraisement was sought or had, the general language of the opinion referred to is not in accord with the true interpretation of the statute. United States *v.* Merck (91 Fed. Rep., 641). A fuller expression of the views of this court upon this point will be found in the case of United States *v.* Bennett & Lowenthal, just decided. (*Infra*, T. D. 31975.)

We rest our opinion in the present case upon the ground that the learned Board of General Appraisers confined the effect of the word approved, which appeared upon the invoice, within too narrow a scope, and that they erred in failing to regard it as applicable to all steps which the law required the appraiser to take in making his appraisement, as well as in making the report thereof. And inasmuch as the importers have failed to sustain any of their contentions, the decision of the Board of General Appraisers must be *reversed.*

So ordered.

(T. D. 31974.)

Kraft paper— Wrapping paper.

PRITCHARD & CO. *v.* UNITED STATES (No. 417).

1. KRAFT PAPER NOT PRINTING PAPER.

The Board of General Appraisers having found the consignment to be wrapping paper and not printing paper, and an examination of the evidence of record failing to show this decision to have been wholly unsupported or contrary to the weight of the evidence, the decision will be affirmed.

2. COMMERCIAL DESIGNATION.

Where there is a question of an article being dutiable and the rate of duty depends on that article's suitableness for a given use, its commercial designation is a material fact.

United States Court of Customs Appeals, October 16, 1911.

APPEAL from Board of United States General Appraisers, Abstract 23582 (T. D. 30733).

[Decision affirmed.]

Comstock & Washburn (*Albert H. Washburn* and *Geo. J. Puckhafer* of counsel) for appellants.

D. Frank Lloyd, Assistant Attorney General (*Martin T. Baldwin* on the brief), for the United States.

Before MONTGOMERY, HUNT, SMITH, BARBER, and DE VRIES, Judges.

BARBER, Judge, delivered the opinion of the court:

The merchandise in this case is a brown paper, known as kraft paper, chiefly manufactured in Norway and Sweden, and the question

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is whether it is dutiable under paragraph 396 or paragraph 402 of the tariff act of July 24, 1897. The material parts of these respective paragraphs are as follows:

396. Printing paper, unsized, sized or glued, suitable for books and newspapers, * * * valued above five cents per pound, fifteen per centum ad valorem.

402. * * * All other paper not specially provided for in this act, twenty-five per centum ad valorem.

The Board of General Appraisers sustained the action of the collector, assessing the paper under paragraph 402.

It is conceded by the importers that the general use of this kraft paper is as a wrapping paper for which its strength makes it especially adaptable and useful. There is no claim that the paper is suitable for printing newspapers.

Before considering the claims of either party, the opinion of the Board of General Appraisers will be examined for the purpose of ascertaining just what was decided there as affecting the issues here. The board distinctly found that the paper in question is not printing paper, and in effect held as a matter of law that Congress intended that the term "printing paper" as used in paragraph 396 "should apply only to such as was *recognized* as printing paper." By this we take it the board considered the term "printing paper" as used in the paragraph to refer only to such as was commercially known as printing paper, or in the event no question of commercial designation was raised, to what was commonly known as printing paper. The board further found that the paper in question is commonly known and used as a wrapping paper, that it is also at times used for printing books and for covers of books—that is, the outside paper covers of books.

It will be observed that paragraph 396 does not apply to *paper suitable for books*, but does relate to *printing* paper suitable for books. We do not treat the condition of "unsized, sized or glued" mentioned in the paragraph as of any consequence, because no claim with reference thereto is made, but it is assumed the paper possesses those characteristics

It is obvious, therefore, that at the threshold of this case it is necessary for the importers to establish, as required by the applicable rules of evidence, the fact that the paper is "printing paper." Upon this issue they seem to have failed so far as the Board of General Appraisers is concerned, and applying the familiar rule that the finding of the board will not be reversed unless it is wholly without evidence to support it or clearly contrary to the weight of evidence, it

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follows that the finding in this case must stand unless, considered in the light of that rule, error be found therein. We have carefully examined the evidence, which is conflicting, upon this question and are unable to say that the board has erred in its finding upon this issue.

But there is one other view of the case which is presented by the importers and merits consideration. It is claimed in substance that the board has misinterpreted the application of the term "printing paper" in that it has limited the same to such papers as are recognized as printing papers; in other words, to paper commercially known as printing paper, and it is said that the rule of commercial designation has no application to such words in the paragraph because the language therein is descriptive and not denominative and that where the dutiability of an article depends upon its suitability for a use the question of commercial designation is inapplicable and immaterial.

We are unable to agree with the contention of appellants that when merchandise is referred to by descriptive terms it may not, if it can, be shown that those terms have a commercial meaning.

In Arthur *v.* Cumming et al. (91 U. S., 362) the court said:

> The rule to be followed in the construction of revenue statutes in cases like this is well settled in this court. It is, that the descriptive terms applied to articles of commerce shall be understood according to the acceptation given to them by commercial men in our own ports at the time of the passage of the act in which they are found.

This is only one of the many cases that may be cited in support of the rule, and the distinction as to its application claimed by appellants seems to be without foundation.

Indeed, it would seem that this case is one peculiarly adapted for the application of the rule that the language used in describing the commodity was used in its commercial sense. The words themselves signify some particular kind of paper and in addition it must be suitable for books.

The question of whether it is printing paper or not may well be determined by the understanding of the trade in relation to paper, but whether or not it is suitable for books still remains a question of fact probably not dependent upon any trade understanding.

We think, therefore, that the board committed no error in finding that the importation was not printing paper. This conclusion makes it unnecessary to further discuss the points raised by appellants' counsel. The result is that the judgment of the Board of General Appraisers is *affirmed*.

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(T. D. 31975.)

Pro forma invoice.

UNITED STATES *v.* BENNETT & LOEWENTHAL (No. 455).

The entry was made on a pro forma invoice, on or about April 25, 1907. On May 2 the importers filed a consular invoice duly certified, showing the consignment cost less than the amount stated in the pro forma invoice. On May 9 the assistant appraiser made a return on the pro forma invoice showing it to be correct, and apparently on the same day the appraiser's approval was indorsed thereon. The collector's notation on the pro forma invoice showed the entered value to be the same as that approved by the appraiser. Later, on May 13, at the request of the appraiser the pro forma invoice was returned to him, and on the next day it was sent to the collector by the assistant appraiser with a notation correcting by diminishing the stated value of the consignment, but no approval of this act by the appraiser is shown, and the collector thereupon indorsed "No reduction in entered value allowed." The importers took no appeal.

1. DUTY OF AN APPRAISER.

An appraiser, after having once performed the duty of appraisement in respect of any particular merchandise and after having made his return thereof to the collector, has no authority of his own volition to make another appraisement of the same merchandise.—United States *v.* Frank & Lambert, *supra* (T. D. 31973).

2. PROCEEDINGS ON A PRO FORMA ENTRY NOT SIMPLY TENTATIVE.

Reviewing at length the history of the legislation, the practice of the Treasury Department and the decisions of the courts as well, no warrant is found for the statement that an entry upon a pro forma invoice should be held open until the certified invoice is produced or the bond given for its production has been forfeited; nor is any authority found for holding that liquidation is proper on an amount less than the entered value in case an entry is made upon a pro forma invoice, no manifest clerical error or duress appearing.

3. THE FUNCTION OF A PRO FORMA INVOICE.

A pro forma invoice is for entry purposes a recognized lawful invoice made under oath as a substitute for a regularly certified invoice; a penalty for undervaluation in such an invoice may be inflicted and an entry on a pro forma invoice is such an entry as the language of section 7, customs administrative act of 1890, should and must apply to, namely, "the duty shall not, however, be assessed in any case upon an amount less than the invoice or entered value."

United States Court of Customs Appeals, October 16, 1911.

TRANSFERRED from United States Circuit Court of Appeals, Second Circuit, Abstract 19656 (T. D. 29267).

[Decision reversed.]

D. Frank Lloyd, Assistant Attorney General (*Charles E. McNabb* on the brief), for the United States.

Oppenheimer & Arnold for the appellees.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

BARBER, Judge, delivered the opinion of the court:

This is an appeal from the judgment of the Circuit Court for the Southern District of New York sustaining the decision of the Board of General Appraisers. The board reversed the action of the collector.

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The undisputed facts are, that about April 25, 1907, the appellees made an entry of imitation horsehair upon a pro forma invoice, showing the value of the horsehair at 19 marks per kilogram. At the time the entry was made the importers did not know the true value of the horsehair, but stated the same in said invoice upon the basis of earlier shipments. This entry was made in order to get possession of the goods as promptly as possible. Within a few days, and not later than May 2, the importers received and filed in the customhouse a duly certified consular invoice showing the cost of the horsehair to be 18.50 marks per kilogram.

May 9 the assistant appraiser made a return on the pro forma invoice showing it to be correct, and apparently on the same day the appraiser's approval was indorsed thereon. Then follows the collector's notation upon the pro forma invoice, showing the entered value to be the same as the amount so approved by the appraiser. May 13 the collector returned the pro forma invoice to the appraiser at his request; on the next day it was returned to the collector by the assistant appraiser with a notation thereon addressed to the collector stating that the correct value was 18.50 marks per kilogram instead of 19 marks as stated in the pro forma invoice. No approval on the part of the appraiser of this action of the assistant appraiser is shown, and the indorsements on the pro forma invoice conclude with that of the collector in the following words: "No reduction in entered value allowed."

The collector liquidated the entry May 28 at the value of 19 marks per kilogram, refusing to allow any reduction in the entered value upon the ground that the attempted second appraisement on the part of the assistant appraiser, if it was such, shown as above, after the pro forma invoice had first been returned to him by the appraiser, was unwarranted and illegal, and that the liquidation of the entry must be governed by section 32 of the act of July 24, 1897, providing that—

> The duty shall not however be assessed in any case upon an amount less than the invoice or entered value.

The importers did not apply for leave to amend their entry under the provisions of article 1449 of the Customs Regulations of 1899 then in force, did not claim a clerical error had been made in their entry, and did not ask for a reappraisement under section 13 of the customs administrative act of June 10, 1890.

The material part of the protest was as follows:

> We claim that your assessing duty on our pro forma invoice value is unjust for the reason that we notified the collector in ample time before our goods were examined that our pro forma invoice value was wrong, and submitted to him our consular invoice bearing the correct market value of these goods. When upon examination the appraiser reported the correct market value to be that amount which appeared

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on the consular invoice, and upon liquidation the collector assessed duty on the pro forma invoice amount, whereby the duty, as per G. A. 5856 (T. D. 25801), should have been assessed upon the consular invoice value, which was reported to be correct by the appraiser.

The Board of General Appraisers held that "the merchandise should have been assessed for duty upon the value in the consular invoice, the appraiser having approved that value," and relied as authority for such holding upon the Foard case (T. D. 28796), to which reference will later be had.

The United States appealed to the Circuit Court for the Southern District of New York, where, as stated, the action of the Board of General Appraisers was affirmed, but no written opinion appears to have been filed in the case. The United States again appealed to the Circuit Court of Appeals for the Second Circuit, and before hearing there the case was duly removed to this court.

At the time the entry was made the certified consular invoice had not arrived and a bond was given for its production pursuant to the provisions of section 4 of the customs administrative act of June 10, 1890. The conditions of the bond were as follows:

Now, therefore, the condition of this obligation is such that if the above bounden obligors, or either of them, or either of their heirs, executors, or administrators, shall and do, within six months from date hereof, produce to the collector of the customs for the district a duly authenticated invoice of the said goods, wares, and merchandise, and shall pay to the said collector the amount of duty to which it shall appear by such invoice said goods, wares, and merchandise are subject, over and above the amount of duties estimated on the appraisement of said goods, wares, and merchandise, then the above obligation to be void; otherwise to remain in full force and virtue.

It is not claimed that the importers did not act in good faith.

As already appears, the Board of General Appraisers in its decision said that the appraiser had approved the value stated in the consular invoice. We have recited all the evidence appearing of record upon that subject and are at a loss to know how this conclusion could have been reached by the board. Counsel for appellees do not suggest how this statement in the finding of the board can be sustained.

The law then apparently in force (Rev. Stat., sec. 2615), with reference to assistant appraisers at the port of New York, provided that they should "examine and inspect such goods, wares, and merchandise as the appraiser may direct and truly report to him the true value thereof according to law. Such reports shall be subject to revision and correction by the appraiser, and when approved by him shall be transmitted to the collector and shall be deemed an appraisement by the United States local appraiser of the district of such merchandise required by law." (See also Rev. Stat., sec. 2943.)

In this connection we notice that by section 1 of the act of July 27, 1866, which seems still to be in force, it is provided that the appraiser

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"in cases of his necessary and occasional absence may perform his functions *ad interim* by deputy designated by him in writing from the assistant appraisers."

No claim is made in this case, however, that the assistant appraiser who attempted what may be called this second appraisement was deputized as above provided. Neither does his signature nor report import such authority. In addition, such action on his part was ignored by the collector, who recognized only the appraisal as made by the assistant and approved by the appraiser as final and the value ascertained thereby to be the appraised value of the importation.

Under section 13 of the customs administrative act, hereinafter quoted, the return of the appraiser to the collector, unless reappraisement is had as therein provided, establishes the appraised value of the importation.

Under article 1241 of the Customs Regulations of 1899 the return of the appraiser could not be reconsidered or modified by him after it was lodged with the collector except in case of clerical error. No statute or authority has been called to our attention which warrants the conclusion that the appraiser has authority, unless it be in case of clerical error, to change an appraisement once made and returned to the collector. To so hold might involve inextricable confusion and uncertainty and work delay in the due administration of the revenue laws contingent upon the change of mind or a whim upon the part of an appraiser. Of course an assistant appraiser could have no such authority.

We think that an appraiser after having once performed the duty of appraisement in respect to any particular merchandise and after having made his return thereof to the collector has no authority of his own volition to make another appraisement of the same merchandise. It follows, therefore, that the collector was justified in disregarding the attempted reconsideration or modification, if it may be so called, of the first appraisement made in this case, and that it was his duty to recognize, as he did, that the value of the importation was fixed by the appraisal made thereof and returned to him on the 9th day of May, 1907, unless it may hereinafter for other reasons be found invalid.

It will be observed that from this appraisement the importers took no appeal.

We do not lose sight of the contention on the part of the appellees that the proceedings which we have already recited do not constitute in law an appraisement.

In the case of United States *v.* Frank & Lambert, heard at our September term, 1910, and which is considered with this case, we have more fully discussed this question, and reference may be had thereto for a full expression of our views upon this subject. It is sufficient

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here to say that in view of the statutes and the adjudicated cases, amongst which are Arthur *v.* Unkart (96 U. S., 118), Gibbs *v.* Washington (1 McAll., 430), United States *v.* Carren (46 Fed. Rep., 45), and Wolff *v.* United States (1 Ct. Cust. Appls., 181; T. D. 31217), we conclude that, unless the same becomes of no force by reason of matters hereinafter considered, the appraisement in this case was duly and lawfully made.

The further and important question in this case is whether, when an entry, in the absence of a duly certified invoice as required by law, is made upon an affidavit and a statement in the form of an invoice or otherwise, showing the actual cost of the merchandise and the statutory bond given for the production of the certified invoice, such proceedings are purely tentative, and it then becomes the duty of the customs officers to withhold appraisement and liquidation until the certified invoice required by law has been produced within the term of the bond, or, in default thereof, the bond has been declared forfeited. Of course if these proceedings are tentative the appraisement made, as appears above, was premature and goes for naught.

It is said that this matter is of much importance as affecting customs practice, and it seems from the various decisions to which we are referred that the question has been one of doubt, both on the part of the board and of the courts.

We insert here so much of the provisions of the customs administrative act of June 10, 1890, as amended by the act of July, 1897, and which constitutes the statute law in force when this importation was made, as seems to be involved in the determination of the question.

SEC. 2. That all invoices of imported merchandise shall be made out in the currency of the place or country from whence the importations shall be made or, if purchased in the currency actually paid therefor, shall contain a correct description of such merchandise, and shall be made in triplicate or in quadruplicate in case of merchandise intended for immediate transportation without appraisement, and signed by the person owning or shipping the same, if the merchandise has been actually purchased, or by the manufacturer or owner thereof, if the same has been procured otherwise than by purchase, or by the duly authorized agent of such purchaser, manufacturer, or owner.

SEC. 3. That all such invoices shall, at or before the shipment of the merchandise, be produced to the consul, vice consul, or commercial agent of the United States of the consular district in which the merchandise was manufactured or purchased as the case may be, for export to the United States, and shall have indorsed thereon, when so produced, a declaration signed by the purchaser, manufacturer, owner, or agent setting forth that the invoice is in all respects correct and true, and was made at the place from which the merchandise is to be exported to the United States; that it contains, if the merchandise was obtained by purchase, a true and full statement of the time when, the place where, the person from whom the same was purchased, and the actual cost thereof and of all charges thereon, as provided by this act; and that no discounts, bounties, or drawbacks are contained in the invoice but such as have been actually allowed thereon; and when obtained in any other manner than by purchase, the actual market value or wholesale price thereof at the time of exportation to the United States in the principal markets of the country from whence exported; that such actual market value is the price at which the merchandise de-

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scribed in the invoice is freely offered for sale to all purchasers in said markets, and that it is the price which the manufacturer or owner making the declaration would have received, and was willing to receive, for such merchandise sold in the ordinary course of trade, in the usual wholesale quantities, and that it includes all charges thereon as provided by this act; and the actual quantity thereof; and that no different invoice of the merchandise mentioned in the invoice so produced has been or will be furnished to anyone. If the merchandise was actually purchased, the declaration shall also contain a statement that the currency in which such invoice is made out is that which was actually paid for the merchandise by the purchaser.

SEC. 4. That, except in case of personal effects accompanying the passenger, no importation of any merchandise exceeding one hundred dollars in dutiable value shall be admitted to entry without the production of a duly-certified invoice thereof as required by law, or of an affidavit made by the owner, importer, or consignee, before the collector or his deputy, showing why it is impracticable to produce such invoice; and no entry shall be made in the absence of a certified invoice, upon affidavit as aforesaid, unless such affidavit be accompanied by a statement in the form of an invoice, or otherwise, showing the actual cost of such merchandise, if purchased, or if obtained otherwise than by purchase, the actual market value or wholesale price thereof at the time of exportation to the United States, in the principal markets of the country from which the same has been imported; which statement shall be verified by the oath of the owner, importer, consignee, or agent desiring to make entry of the merchandise, to be administered by the collector or his deputy, and it shall be lawful for the collector or his deputy to examine the deponent under oath touching the sources of his knowledge, information, or belief in the premises, and to require him to produce any letter, paper, or statement of account, in his possession, or under his control, which may assist the officers of customs in ascertaining the actual value of the importation or any part thereof; and in default of such production when so requested, such owner, importer, consignee, or agent shall be thereafter debarred from producing any such letter, paper, or statement for the purpose of avoiding any additional duty, penalty, or forfeiture incurred under this act, unless he shall show to the satisfaction of the court or the officers of the customs, as the case may be, that it was not in his power to produce the same when so demanded; and no merchandise shall be admitted to entry under the provisions of this section unless the collector shall be satisfied that the failure to produce a duly certified invoice is due to causes beyond the control of the owner, consignee, or agent thereof: *Provided*, That the Secretary of the Treasury may make regulations by which books, magazines, and other periodicals published and imported in successive parts, numbers, or volumes, and entitled to be imported free of duty, shall require but one declaration for the entire series. And when entry of merchandise exceeding one hundred dollars in value is made by a statement in the form of an invoice the collector shall require a bond for the production of a duly certified invoice.

SEC. 5. That whenever merchandise imported into the United States is entered by invoice, one of the following declarations, according to the nature of the case, shall be filed with the collector of the port, at the time of entry by the owner, importer, consignee, or agent; which declaration so filed shall be duly signed by the owner, importer, consignee, or agent, before the collector, or before a notary public or other officer duly authorized by law to administer oaths and take acknowledgments, who may be designated by the Secretary of the Treasury to receive such declarations and to certify to the identity of the persons making them, under regulations to be prescribed by the Secretary of the Treasury; and every officer so designated shall file with the collector of the port a copy of his official signature and seal: *Provided*, That if any of the invoices or bills of lading of any merchandise imported in any one vessel, which should otherwise be embraced in said entry, have not been received at the date of entry, the declaration may state the fact, and thereupon such merchandise

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of which the invoices or bills of lading are not produced shall not be included in such entry, but may be entered subsequently. * * *

[Here follow appropriate forms which it is not material to insert.]

SEC. 7. That the owner, consignee, or agent of any imported merchandise which has been actually purchased may, at the time when he shall make and verify his written entry of such merchandise, but not afterwards, make such addition in the entry to the cost or value given in the invoice or pro forma invoice or statement in the form of an invoice, which he shall produce with his entry, as in his opinion may raise the same to the actual market value or wholesale price of such merchandise at the time of exportation to the United States, in the principal markets of the country from which the same has been imported; but no such addition shall be made upon entry to the invoice value of any imported merchandise obtained otherwise than by actual purchase; and the collector within whose district any merchandise may be imported or entered, whether the same has been actually purchased or procured otherwise than by purchase, shall cause the actual market value or wholesale price of such merchandise to be appraised; and if the appraised value of any article of imported merchandise subject to an ad valorem duty or to a duty based upon or regulated in any manner by the value thereof shall exceed the value declared in the entry, there shall be levied, collected, and paid, in addition to the duties imposed by law on such merchandise, an additional duty of one per centum of the total appraised value thereof for each one per centum that such appraised value exceeds the value declared in the entry, but the additional duties shall only apply to the particular article or articles in each invoice that are so undervalued, and shall be limited to fifty per centum of the appraised value of such article or articles. Such additional duties shall not be construed to be penal, and shall not be remitted, nor payment thereof in any way avoided, except in cases arising from a manifest clerical error, nor shall they be refunded in case of exportation of the merchandise, or on any other account, nor shall they be subject to the benefit of drawback: *Provided*, That if the appraised value of any merchandise shall exceed the value declared in the entry by more than fifty per centum, except when arising from a manifest clerical error, such entry shall be held to be presumptively fraudulent, and the collector of customs shall seize such merchandise and proceed as in case of forfeiture for violation of the customs laws, and in any legal proceeding that may result from such seizure, the undervaluation as shown by the appraisal shall be presumptive evidence of fraud, and the burden of proof shall be on the claimant to rebut the same and forfeiture shall be adjudged unless he shall rebut such presumption of fraudulent intent by sufficient evidence. The forfeiture provided for in this section shall apply to the whole of the merchandise or the value thereof in the case or package containing the particular article or articles in each invoice which are undervalued: *Provided further*, That all additional duties, penalties, or forfeitures applicable to merchandise entered by a duly certified invoice, shall be alike applicable to merchandise entered by a pro forma invoice or statement in the form of an invoice, and no forfeiture or disability of any kind, incurred under the provisions of this section shall be remitted or mitigated by the Secretary of the Treasury. The duty shall not, however, be assessed in any case upon an amount less than the invoice or entered value.

SEC. 14. That the decision of the collector as to the rate and amount of duties chargeable upon imported merchandise, including all dutiable costs and charges, and as to all fees and exactions of whatever character (except duties on tonnage), shall be final and conclusive against all persons interested therein, unless the owner, importer, consignee, or agent of such merchandise, or the person paying such fees, charges, and exactions other than duties, shall, within ten days after "but not before" such ascertainment and liquidation of duties, as well in cases of merchandise entered in bond as for consumption, or within ten days after the payment of such fees, charges, and exactions, if dissatisfied with such decision give notice in writing to the col-

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lector, setting forth therein distinctly and specifically, and in respect to each entry or payment, the reasons for his objections thereto, and if the merchandise is entered for consumption shall pay the full amount of the duties and charges ascertained to be due thereon. * * *

It may be stated at the outset that an entry made on affidavit and statement in the form of an invoice or otherwise is generally known as an entry made upon a pro forma invoice, and will usually be so referred to here.

It will be observed that the most careful scrutiny of these sections fails to discover any express provision that the proceedings on a pro forma entry are tentative purely and so appraisement and liquidation are to be suspended until the certified invoice is produced or the bond forfeited; but it having been stated in some decisions, which will later be referred to, that such has been the practice, and is the law, we proceed to examine as briefly as may be the history of legislation upon the subject, and to consider so far as is ascertainable what the practice in this regard has been.

It appears in chapter 4, Title XXXIV, of Revised Statutes, that as early as 1799 the owner or consignee of merchandise imported or their agent at the time of entry thereof was required to produce the original invoice and give in writing certain information relating thereto, designed to aid in the ascertainment of its value. If the particulars of any merchandise were unknown, entry was permitted to be made according to the circumstances of the case, provided the party making the same declared upon oath such knowledge as he might possess or his belief in the premises, stating that he had no other, and the collector whenever an entry was imperfect for want of invoices, bills of lading, or other causes, was required to take the merchandise into his custody until the quantity, quality, or value thereof, as the case might be, could be ascertained. (See Rev. Stats., secs. 2785, 2786, 2787, 2788, and 2789.)

By the act of March, 1823, it was in substance provided that no entry of merchandise subject to an ad valorem duty should be made, unless "the true invoice of the same be presented to the collector at the time of entry," but it was further enacted that in certain cases where no invoice had been received the collector, if he deemed expedient, might permit an entry on appraisement to be made if the person making the same gave a sufficient bond to produce the invoice within a time stated, and it was also provided that when the invoice was wanting and the merchandise was imported and not entered, it should be deposited in a public warehouse at the expense and risk of the owner until the invoice was produced. (See 3 Stat. L., 729.)

The act of March, 1863, required that all invoices of imported merchandise should be presented to the consular office abroad for cer-

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tification to be made thereon, showing, among other things, the price paid therefor, and that no merchandise imported into this country should be admitted to entry unless the invoice presented contained such certificate. The invoices and certificates were to be made in triplicate, one of which was to be delivered to the person presenting the invoice, another to be kept by the consul, and the other transmitted by him to the collector of the stated port of entry in this country. It was also provided that if, on account of any change in the destination of the goods, after the production of the invoice to the consul, or from other cause, the triplicate transmitted to the collector of the port to which the merchandise was originally destined should not have been received at the port where the merchandise actually arrived, that entry might be made provided that a bond was given for the payment of the duty which might be found to be actually due thereon, in which case the collector at the port of entry was required to immediately notify the certifying consul, whose duty thereupon was to transmit a certified copy of the triplicate remaining in his hands. In that event it was provided "said duty shall not be finally liquidated until such triplicate or certified copy thereof shall have been received: *Provided*, That such liquidation shall not be delayed longer than eighteen months from the time of making such entry."

The act further provided that when from accident or other cause it was impracticable for the person desiring to make an entry of merchandise to produce at the time any invoice required by law it should be lawful for the Secretary of the Treasury to authorize an entry of such merchandise upon such terms and in accordance with such general or special regulations as he might prescribe. (12 Stat. L., 737, 738, 739.)

We note here that no reference to delayed liquidation is found in this act, except as above stated.

By the act of June, 1874, sometimes known as the "antimoiety act," Congress expressly and for the first time appears to have authorized an entry to be made in the absence of the certified invoice, provided the person making the entry made affidavit showing why it was impracticable to produce such invoice, and accompanied the entry by a statement in the form of an invoice, or otherwise, also under oath, showing either the actual cost of the merchandise, or to the best of the knowledge, information, and belief of the deponent, the foreign market value thereof; and it was further therein provided that the collector might examine the person making such entry under oath touching the source of his knowledge or belief in the premises and require him to produce any letter or paper in his possession or under his control which might assist the customs officers in ascertaining the dutiable value of the merchandise. (See 18 Stat. L., 186, 187, 188.)

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Section 4 of the customs administrative act of June 10, 1890, above quoted, is a substantial reenactment of the statute last referred to, and in addition provides that when entry of merchandise exceeding $100 in value is made upon a statement in the form of an invoice the collector shall require a bond for the production of a duly certified invoice.

It should be observed here that nearly if not all the foregoing statutes refer to the entry of merchandise, not personal effects accompanying a passenger, and where the value thereof exceeds $100.

Beginning with the customs regulations of 1857, which are the earliest to which our attention has been called, it has always been required when an entry has been made upon a pro forma invoice, whether such entry was permitted only in the discretion of the Secretary of the Treasury, or was expressly authorized by statute, that a bond conditioned substantially like the one given in this case should be furnished by the person making the entry, and the bond has always in substance provided for the payment of such additional amount of duty as it shall appear by the certified invoice the importation was subject, over and above the amount estimated on the assessment thereof. (Customs Regulations of 1857, art. 213; 1874, art. 334; 1884, art. 326; 1892, art. 285; 1899, art. 394.)

It appears that subsequent to the act of 1874 and until October, 1878, entries, when permitted to be made upon a pro forma invoice, were treated as to their liability to penal duties in case of undervaluation in the same manner as entries made upon a duly certified invoice, or other invoice, required by law. (Report of the Secretary of the Treasury on the collection of duties, 1885, pp. 64–65, and Customs Regulations of 1874, arts. 341, 486.)

In 1878 an importer raised the question that section 2900 of the Revised Statutes providing for the collection of additional duties in cases of undervaluation in entries did not apply to an undervaluation made in a pro forma invoice. The Attorney General considered the matter and sustained the contention of the importer. (See Opins. Atty. Gen., vol. 16, pp. 158–161.)

It also appears from the report of the Secretary of the Treasury on the collection of duties, 1885, pages 64 and 65, and the report of the same official on the revision of the tariff, 1886, pages xxxii and xxxiii, that consequent upon the foregoing ruling of the Attorney General the number of entries upon pro forma invoices had astonishingly increased and the Secretary submitted in these reports facts that then seemed to warrant the belief that large frauds upon the revenue were practiced under the guise of these pro forma invoices. The attention of Congress was, by the Secretary, invited to this subject and legislation suggested to relieve the situation and prevent the claimed existing frauds.

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The Secretary of the Treasury, in his report, December 3, 1888 (see H. Ex. Docs., 2d sess., 50th Cong., p. xxxi), again referred to the subject of merchandise entered upon pro forma invoices and recommended—

The amendment of the law so as to subject merchandise entered upon a pro forma invoice to the same conditions as are imposed in case of entry upon "original" or regularly certified invoices.

Congress, by section 7 of the customs administrative act of June 10, 1890, either in reply to the recommendations of the Secretary of the Treasury, to which we have referred, or for other considerations which were presented to it, enacted—

That all additional duties, penalties, or forfeitures applicable to merchandise entered by a duly certified invoice shall be alike applicable to merchandise entered by a pro forma invoice or statement in the form of an invoice. * * * The duties shall not, however, be assessed in any case upon an amount less than the invoice or entered value.

Since the enactment of this statute it appears to have been considered that the penalty for an undervaluation applies to the value stated in a pro forma invoice. United States *v.* Merck (91 Fed. Rep., 641); *In re* Leggett & Co. (T. D. 10548).

But the Treasury Department, as it already appears, held that the previous statutes should receive the same construction and had so applied them until the adverse ruling on the subject by the Attorney General in 1878. That this attitude of the Department was not wholly without show of reason may be gathered from a brief review of the statutes upon which it was based. In 1846 (9 Stat. L., p. 43) it was provided—

That under no circumstances shall duty be assessed upon an amount less than the invoice value, any law of Congress to the contrary notwithstanding.

And similar provisions are found in the act of March 3, 1857 (11 Stat. L., 199), act of March 3, 1865 (13 Stat. L., 491–494), act of July 28, 1866 (14 Stat. L., 328–330); Rev. Stats., sec. 2900), in which the precise language was, "the duty shall not, however, be assessed upon an amount less than the invoice or entered value."

The Treasury Department, in addition to its persistent and consistent claim upon this subject, had kept in its regulations during all the time substantially the following provisions relating to this subject:

Where imports have been entered on affidavit and statement, in the absence of an invoice, and the value in the invoice afterwards produced is less than that found by the appraiser on the entry, no allowance by return of duties can be made for the difference. But if the invoice shows a value greater than that ascertained by the appraisement the United States will be entitled to duties on such excess value. (Cust. Regs. of 1857, art. 360; 1874, art. 341; 1884, art. 329; 1892, art. 285; 1899, art. 394.)

And there is nothing whatever in this case tending to show, and it is not claimed, that these regulations have not been enforced, except as hereinafter appears.

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Congress must be presumed to have legislated upon this subject having in view this long-continued departmental construction of the statute law, and in interpreting its enactments such executive construction becomes important. Komada *v.* United States (215 U. S., 392).

But it is urged that, notwithstanding the foregoing construction of the statutes by the Treasury Department and the practice thereunder, the courts have held the contrary view and that we should follow the same.

Space does not permit or necessity require an extended review of all the decisions to which our attention has been called. It is safe to say at the outset that they are irreconcilable.

To illustrate, in the case at bar the board relied upon its own decision in Foard's case (T. D. 28796), decided February 18, 1908. It appeared there that an overvaluation of importation had been made in the pro forma invoice by including therein the amount of certain concededly nondutiable charges. Thereupon the appraiser indorsed on the entry "value correct," returned the same to the collector who treated it as an appraisement and thereon proceeded to liquidation. Thereafter the consular invoice was duly produced which showed the error. The board held that the appraiser's action did not constitute an appraisement and relying upon the Commercial Cable Co. case, to which reference will later be made, held that duty should be taken upon the value shown in the consular invoice. Their decision, however, was upon appeal, and without any written opinion being filed reversed by the Circuit Court for the District of Maryland (T. D. 30936).

In the case at bar the decision of the board has been affirmed in the Circuit Court for the Southern District of New York, also without any written opinion being filed, and we are not, therefore, aided in this case by the reasoning of these two learned courts whose views seem to be at variance upon the question involved here.

We are cited to no decision prior to the case of United States *v.* Commercial Cable Co. (141 Fed. Rep., 473), decided May 24, 1905, either of the Board of General Appraisers or of a court which seems to be in point upon the question involved here.

In the last-mentioned case the facts were as follows: Entry was made on a pro forma invoice April 19, 1904, and before appraisal the importers produced an invoice duly certified by the consul abroad which was filed with the collector April 21. May 3 the appraiser made his return, approving the value named in the certified invoice, which was less than that stated in the pro forma invoice. The collector assessed duty upon the value based upon the pro forma invoice. The importers contended that it should have been upon the valuation shown by the certified consular invoice and the return of the local appraiser. The Board of General Appraisers sustained the protest.

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The collector evidently proceeded upon the theory that duty ought not to be taken in any event upon an amount less than the entered value, which was that stated in the pro forma invoice. In their decision the board said:

The rule is well settled that an entry on a pro forma invoice remains "open" until the conditions of the bond for the production of the consular invoice have been fulfilled or until the bond itself has become forfeited. * * * The importer's bond for the production of the duly certified invoice is usually conditioned for the payment of such duties as may be found due above the estimated duties. Customs administrative act, June 10, 1890, section 4, provides that "when entry of merchandise exceeding one hundred dollars in value is made by a statement in the form of an invoice (meaning a pro forma invoice), the collector shall require a bond for the production of a duly certified invoice." Unless corrections of value and of liquidation can be made upon the basis of the consular invoice when obtained and approved by the appraiser the provisions of this section would be nugatory. Where an importer gives a bond for the production of necessary documents, or where the collector waives the giving of such bond, the importer's rights are preserved. * * * An entry made upon a pro forma invoice is necessarily tentative and liable to correction on the production of a corrected invoice, duly authenticated, when filed in time. * * * We are of opinion that the giving of the bond required by statute preserved the rights of the importers and left the entry open, it having been made on a mere pro forma invoice. Upon the subsequent production of the consular invoice and on its approval by the appraiser the importers were entitled to have the entry liquidated on the basis of the appraised value corresponding with the value shown by the consular invoice.

The board cites the following cases in support of its conclusion: *In re* Courtin (T. D. 23557); Carnes *v.* Maxwell (3 Blatch., 420; 5 Fed. Cases, 90); Schmeider *v.* Barney (6 Fed. Rep., 150); Howland *v.* Maxwell (3 Blatch., 146; 12 Fed. Cases, 742); Gillespie *v.* United States (124 Fed. Rep., 106).

Upon appeal by the United States the Circuit Court for the Southern District of New York affirmed the decision of the Board of General Appraisers without filing any opinion. The United States did not appeal from this decision, and the case is mainly relied upon by the importers here.

It may be observed that in the Commercial Cable Co. case it appeared that the only appraisal made fixed the value of the merchandise at that shown by the consular invoice, while in the case at bar the appraisal fixes the value at that shown by the entry made upon the pro forma invoice, and in that respect the cases differ. If, however, it is the law, as stated by the board in the opinion last quoted, that the proceedings in an entry made upon a pro forma invoice remain open until the conditions of the bond have been fulfilled or until the bond itself becomes forfeited, it must result that the appraisement made in the case before us is a nullity.

This decision of the board as affirmed by the court seems to be utterly at variance with the customs regulations and with the construction given to contemporaneous statutes by the Treasury Department, as heretofore set forth, to the effect that duty in no case should

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be taken upon an amount less than the invoice or entered value, and, as already suggested, it seems to be the first decision in which it has been definitely said that the proceedings in an entry upon a pro forma invoice were purely tentative until the certified invoice was produced or the bond forfeited.

We consider briefly the cases relied upon by the board in its opinion.

In the Courtin case, decided in 1902, the issue was whether certain valid existing regulations relating to importation of goods, claimed to be of American origin and therefore entitled to free entry, had been complied with. The board held, in view of the circumstances, that a sufficient compliance had been made.

In Carnes *v.* Maxwell, which was decided in 1856 in the Circuit Court for the Southern District of New York, the entry was made in conformity to a mistake in value stated in an original invoice and as a result of which the entered value was too small. The importers immediately discovered the mistake, notified the customs officers thereof, obtained a correct invoice, delivered the same to the customhouse and requested permission to correct the error. Duties were paid on the erroneous value and also the penal duty for undervaluation. There was no appraisal of the entry before the corrected invoice was produced. The court held under those facts that the collector had no right to impose the penal duty, relying upon a decision theretofore made in the case of Howland *v.* Maxwell, decided in 1853 in the same circuit court.

In that case the value of the merchandise was stated as it appeared in the original invoice, which was erroneous in that respect. Before appraisal, a corrected invoice was received and permission asked by the consignee who made the entry to correct the error by stating the value to correspond with that shown by the corrected invoice. The collector refused to allow this. The appraiser valued the merchandise as shown in the erroneous invoice and the penal duties were assessed. The court held that the oath of the consignee upon the entry made it his duty to acquaint the collector of the second invoice, and that, the same having been received and filed in the customhouse before any action had been taken there to determine the value of the importation, the plaintiffs had a right on a question of duties merely to claim that the valuation of the importation ought to be made upon the corrected invoice and not upon the one first produced. In this case the court said:

> Had the goods been seized for a fraudulent undervaluation, or had an appraisal been made upon the entry before the corrected invoice was produced, the question on this point might stand on different grounds.

In the case of Schmeider *v.* Barney, decided March 12, 1888, in the Circuit Court for the Southern District of New York, a corrected

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invoice was made and received before any appraisal; was accepted by the collector as the true invoice, and the original entry was made to correspond to the corrected invoice. It does not appear whether or not the entry was made upon a pro forma invoice. The value shown by the corrected invoice was greater than that stated in the entry and one question was whether the penal duty could be collected for the undervaluation made in the invoice. The court held that upon the authority of Howland *v.* Maxwell the valuation was properly made upon the corrected invoice and also that the penal duties should not have been assessed.

In Gillespie *v.* United States, decided May 24, 1900, the entry was not made upon a pro forma invoice, but the importers, by mistake, had included the value of certain containers in the value of the merchandise, which containers being of American manufacture were not dutiable. Immediately after entry the importers deducted the value of the containers and pointed the same out to the collector who assented to the correction, but the naval office refused to allow the correction to be made. Before liquidation the corrected invoice was procured, but the collector refused to make the allowance, alleging that the provision of section 7 of the customs administrative act of 1890 provided that duty should not be taken in any case upon an amount less than the invoice or entered value. The Circuit Court for the Southern District of New York sustained the importer's contention, reversing the Board of General Appraisers. In overruling the board, the court in that case stated that it clearly came within the rule laid down in United States *v.* Benjamin (72 Fed. Rep., 51) and United States *v.* Zuricaldy (71 Fed. Rep., 955).

An examination of these two cases last referred to by the court shows that the first involved the question of whether the value in an entry which was practically made under duress and was occasioned by an unauthorized act of the United States consul abroad was conclusive upon the importer. The court held that it was not. The second involved the question of a clerical error, and is not in point because no clerical error is claimed here.

The foregoing decisions do not to us seem to warrant the statement in the decision of the board that an entry upon a pro forma invoice should be held open until the certified invoice is produced or the bond given for its production has been forfeited. Neither do we think that they are authority for holding that the liquidation can be upon an amount less than the entered value in case an entry is made upon a pro forma invoice, no manifest clerical error or duress appearing.

We are brought, therefore, to the question of whether the decision in the case of United States *v.* Commercial Cable Co. shall be followed here.

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We are not concerned in this case with clerical errors because no such error is claimed. In addition to this the customs regulations since and including 1857 have contained provision for relief from mistakes in the assessment of duties resulting from a manifest clerical error. (Cust. Regs. of 1857, art. 208; 1874, art. 534; 1884, art. 611; 1892, art. 925; 1899, art. 1455.)

Some of the cases relied upon by the importers, which we have not specifically mentioned, lose their supposed controlling force because of the fact that the decisions turn upon manifest clerical errors, or upon an entry made under duress, and no duress here is claimed.

The suggestion made in the decision of the Board of General Appraisers in United States *v.* Commercial Cable Co., that unless corrections of value and liquidation can be made upon the basis of the consular invoice when obtained, the provisions of section 4 of the customs administrative act that the importer should produce the duly certified invoice when received would be nugatory, evidently did not take into consideration that this provision is obviously for the protection of the Government and to prevent undervaluation, or that the customs regulations since and including 1857 have contained provisions evidently designed to relieve the importer in proper cases. (Cust. Regs. of 1857, art. 295; 1874, art. 530; 1884, art. 607; 1892, art. 920; 1899, art. 1449.)

These regulations in substance provide that in view of the oath prescribed by law to be taken on entry, making it the duty of the importer in case he discovers at any time after entry any error in the invoice or account produced or receives any other invoice, he shall immediately make the same known to the collector, and that whenever such error is brought to the notice of the collector before "the invoice or account has come under the observation of the appraisers, or any examination has been made of the goods, and application under oath is made to amend the entry by the importer, such application shall be transmitted to the Secretary of the Treasury for such action as may be deemed proper."

From what already appears we conclude that it has always been contemplated when merchandise dutiable at ad valorem rates is imported there shall be presented at the time of entry the original or certified invoice thereof, or a certified copy as the law may have provided, showing the cost of the merchandise so that the appraiser might take the cost into consideration in determining the value for the assessment of duty. Any variation from this rule when made by regulations or by statute has been for the convenience of the importer.

The controversies and adjudications which have arisen and been had as to undervaluation in a pro forma invoice are, though instructive, not controlling here, because there is a difference between the

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imposing an additional or penal duty for an undervaluation and the assessment of the prescribed legal rate upon the valuation which the importer sees fit to place upon his goods. The latter is accepting his judgment of the value as a sum below which the value will not be placed, and which may be raised, and the former is imposing a penalty for what is in theory an attempt to evade or avoid the tariff laws. The importer has his option to take advantage of the provision for his benefit, namely, the privilege of entering his goods upon a pro forma invoice or not as he pleases, and has no just ground for complaint if, for the purpose of permitting immediate entry when he has not the papers the law requires him to have or produce, the Government takes him at his word as to the minimum value of his merchandise. Who should know better than he, or who can more quickly or easily ascertain the value of the merchandise he may desire to enter?

The fact that in making provision for an entry in the absence of the original or certified invoice there is only one instance found in the statutes where a delay in liquidation has been provided for, is suggestive of the fact that it was in other cases contemplated liquidation should proceed without delay upon such an entry the same as in other cases.

The Customs Regulations of 1899, article 1420, seem to so contemplate.

The value stated in an entry upon a certified invoice, no duress or manifest clerical error appearing, is, under the provisions of section 7 of the customs administrative act, conclusive upon the importer and duty can not be assessed upon a less value by the collector. Daloz *v.* United States (171 Fed. Rep., 275); Vantine *v.* United States (91 Fed. Rep., 519); Kimball *v.* The Collector (10 Wall., 436, 450); *In re* Irwin (T. D. 25764); *In re* Schulze-Berge-Koechl (T. D. 10533); Ullman *v.* United States (1 Ct. Cust. Appls., 61).

We think, in view of the circumstances under which this section was enacted and in view of the unambiguous language there used, no distinction in this regard can be made between an entry made upon a certified invoice and one made upon a pro forma invoice.

The pro forma invoice is recognized by law. It is made an invoice for entry purposes in the absence of the certified invoice for the purposes of section 5 of the act, and, like it, must be under oath. It is an invoice for the purpose of fixing the penalty for undervaluation under section 7 thereof, and we are unable to conclude that it is not an invoice for the purpose of the last sentence of that section: "The duty shall not, however, be assessed in any case upon an amount less than the invoice or entered value."

It was said in substance by the Supreme Court in Marriott *v.* Brune et al. (9 How., 619), relating to the act of 1846 providing that "under

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no circumstances shall the duty be assessed upon an amount less than the invoice or entered value, any law of Congress to the contrary notwithstanding," that this provision created a species of estoppel so far as not to let the entered value be made lower than was originally admitted in the invoice, and it was not there intimated that there was any doubt that the statute warranted that construction. See also Sampson *v.* Peaslee (20 How., 571).

In Roebling *v.* United States (77 Fed. Rep., 601) it was held in substance that although the importer had included in his entered value, which was based on the original invoice, certain items that were not in law a part of the value, yet, the same having been voluntarily included by him could not after appraisal be deducted by the Board of General Appraisers upon hearing of the protest, although it was said that if the appraiser had added the same items they might have been deducted by the board.

This holding was based upon the opinion of the Supreme Court in Oberteuffer *v.* Robertson (116 U. S., 499), where a similar doctrine was announced. The analogy is plain. One of the grounds upon which the importers here claim relief is that it is a hardship to be compelled to pay duty upon a value which is concededly too high. A like hardship was apparent in the case last cited, but the court held that the provisions of Revised Statutes, section 2900, that duty can not be assessed upon an amount less than the invoice or entered value was plain, and that—

> Whatever is put down in the invoice and entry as the value of the goods *per se* can not be diminished, although in fact there may have been included in such value the cost of cartons and packing, unless the invoice or entry shows distinctly what such cost was and that it was included.

In the case last referred to, as here, the importer was compelled to pay on his own valuation of the goods, which was in fact too high; but the hardship is no greater upon the importer and he is no more deserving of relief when the entered value of his goods, based upon a pro forma invoice, is too high than when the same conditions exist in an entry based upon a duly certified invoice.

It is perhaps unnecessary to add that if the importer's declaration of value made with an entry is obtained by duress he is not thereby estopped. In harmony with well-settled legal principles, the law does not recognize that to be his voluntary act, as a consequence of which he can not in a proper case be heard to question the value so declared. Robertson *v.* Bradbury (132 U. S., 491).

The claim that the proceedings in case of an entry upon a pro forma invoice are tentative and must be held open would seem to be unsupported by authority or reason. There must, we think, of necessity always be at the time of an entry an invoice or entered value not reducible by the importer after appraisement, unless there is a mani-

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fest clerical error or duress, to which duty at once attaches, and that the statement of this nonreducible amount by the importer can not at his option be deferred through the device of a pro forma entry with the accompanying bond.

If in any case it shall happen than an importer's knowledge of the value of his goods is so imperfect as not to warrant an entry upon a pro forma invoice, in view of this interpretation of the statute, if such a case be supposable, he can defer his entry until the requisite knowledge is obtained or the certified invoice has arrived.

We think the learned Circuit Court erred in sustaining the action of the Board of General Appraisers in this case, and the result is that its judgment is *reversed.*

(T. D. 31976.)

Fox skins.

UNITED STATES *v.* HARTWIG (No. 523).

FOX SKINS, DRESSED, DYED, AND POINTED, "MANUFACTURES."

Alaska fox skins that have been dressed and dyed and pointed by the insertion in the fur at intervals of white hairs from the badger, these white hairs being glued to the skin and making them an imitation silver-fox skin, since a new article is thereby made, with a new name, character, and use, constitute a manufacture, but not a manufacture of furs prepared for use as material, and the skins were dutiable at 20 per cent ad valorem, whether taken by similitude as furs dressed on the skin or as nonenumerated manufactured articles.

United States Court of Customs Appeals, October 16, 1911.

APPEAL from Board of United States General Appraisers, G. A. 7117 (T. D. 31018).

[Decision affirmed.]

D. Frank Lloyd, Assistant Attorney General (*Charles E. McNabb* on the brief), for the United States.

Brown & Gerry (*James L. Gerry* and *Allan R. Brown* of counsel) for appellees.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

SMITH, Judge, delivered the opinion of the court:

This case involves the classification of certain fox skins which were entered at the port of New York on October 21, 1909. Some of the skins were assessed for duty by the collector at 50 per cent ad valorem as fur wearing apparel partly made, and some of them at 35 per cent ad valorem as manufactures of furs, under the provisions of paragraph 439 of the tariff act of August 5, 1909, which reads as follows:

439. Furs dressed on the skin, not advanced further than dyeing, but not repaired, twenty per centum ad valorem; manufactures of furs, further advanced than dressing and dyeing, when prepared for use as material, including plates, linings, and crosses, thirty-five per centum ad valorem; articles of wearing apparel of every description, partly or wholly manufactured, composed of or of which fur is the component material of chief value, fifty per centum ad valorem. Furs not on the skin, prepared for hatters' use, including fur skins carroted, twenty per centum ad valorem.

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Objection on several grounds was taken to the classification and the duty assessed, but the claim set up in the protest upon which the importer really relied was that the merchandise imported was dutiable at 20 per cent ad valorem either under the first clause of said paragraph 439 or under paragraph 480, which is as follows:

480. That there shall be levied, collected, and paid on the importation of all raw or unmanufactured articles, not enumerated or provided for in this section, a duty of ten per centum ad valorem, and on all articles manufactured, in whole or in part, not provided for in this section, a duty of twenty per centum ad valorem.

The board was of opinion that the fox skins classified as wearing apparel partly made were at best material prepared for special uses and therefore dutiable at 35 per cent ad valorem. As the importer, however, had not set up that claim in his protest the collector's assessment was permitted to stand.

The fox skins which were classified by the collector as manufactures of furs at 35 per cent ad valorem were held by the board to be similar to furs dressed on the skin and dutiable by similitude under the first clause of paragraph 439 at 20 per cent ad valorem. As to that particular part of the importation the protest was therefore sustained by the board. From the decision overruling the protest as to the articles assessed as "wearing apparel partly made" the importer took no appeal. From the decision sustaining the protest as to the merchandise which was assessed for duty at 35 per cent ad valorem the Government appealed, and that is the appeal which is now before us for consideration.

The goods the classification of which is in controversy are fox skins dressed, dyed, and pointed, and were returned by the appraiser as "manufactures of furs" dutiable at 35 per cent ad valorem under paragraph 439. It appears from the uncontradicted testimony produced on the hearing that the articles in question are made from the pelts of the Alaska fox, which are dressed and then dyed to the general color of the fur of the silver fox. The skins, after dressing and dyeing, are pointed by inserting in the fur at intervals white hairs from the badger, which hairs are glued to the skin to hold them in place. The process of pointing, evidently a tedious one, is intended and designed to give the fur the semblance and aspect of that of the silver fox, a different animal from the one from which the pelt is actually taken. The dressing and dyeing of the furs did not of course make them anything more than furs dressed and dyed on the skin and therefore can not be said to have carried the goods into the category of a manufacture of furs. By the pointing of the furs, however, different materials from independent sources were so artificially brought together that the fur of one animal was given the appearance and, we assume, the more attractive

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qualities of another. By the addition of the white hairs of the badger to the original skin the latter was converted into an imitation silver-fox skin, a product which neither in fact nor in trade was a badger skin or an Alaska fox skin, but an entity differing from both and adapted to a commercial use for which neither of its components was fitted or suitable. Such a processing of materials created a new article, with a new name, a new character, and a new use, and therefore, in our opinion, constituted a "manufacture" as that term has been judicially defined. In a well-considered opinion by General Appraiser Fischer (T. D. 22519) the board held that imitation ermine tails made by combining pieces of black fur with pieces of white fur from the coney were manufactures of furs. In that case it was well said:

> The goods are, therefore, clearly articles manufactured from two kinds of fur and are no longer merely fur. Their character and form have been changed by labor and they have acquired a new name, character, and use, and their classification must follow that changed condition.

What was there declared with reference to imitation ermine tails we think may be applied with equal force to imitation silver-fox skins, the merchandise which is here under discussion.

The dressed and dyed skin of the Alaska fox thus manufactured into an imitation of that of the silver fox has not been further advanced, however, and can no more be considered as a manufacture of furs *prepared for use as material* than could a true silver-fox skin in the same condition. It has not been cut or shaped for a stole, a muff, or a rug, or prepared as material for the making of any specific article or class of articles. In the sense that out of it something may be made, it is of course a material, but it has not been advanced to the point where it can be identified as a material prepared and suitable for any special or definite manufacturing use. We can not, therefore, sustain the Government's contention that the merchandise in issue is a "manufacture of furs prepared for use as material."

No provision having been made in the tariff act of August 5, 1909, for manufactures of furs in general, it would seem that the merchandise in question should be assessed for duty either under paragraph 480 or under the first clause of paragraph 439, by virtue of the provisions of paragraph 481. Under which of these provisions the importation should be assessed for duty it is unnecessary to decide in this case. Whether the merchandise be held to be dutiable under the first clause of paragraph 439 by similitude to furs dressed on the skin not further advanced than dyeing but not repaired, or under paragraph 480 as a nonenumerated manufactured article, the rate of duty would be 20 per cent ad valorem, which was the rate fixed by the board.

The decision of the board must be *affirmed*.

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(T. D. 31977.)

Leather.

WORSDELL & CO. ET AL. *v.* UNITED STATES (No. 548).

1. SEAL SPLITS OR SEAL SPLIT LEATHERS.

Paragraph 450, tariff act of 1909, does not cover leathers made from the hides or skins of animals that are not cattle of the bovine species, and as seal splits or seal split leathers are made from animals not of the bovine species, they do not fall within the provisions of that paragraph.

2. GRAIN OR SPLIT LEATHER.

It not having been shown that the terms "grain leather" and "split leather," as used in paragraph 450 of the tariff act of 1909, are applicable in the trade only to leathers which are unfinished, finished leathers of these kinds made from the hides of cattle of the bovine species are dutiable under said paragraph.

United States Court of Customs Appeals, October 16, 1911.

APPEAL from Board of United States General Appraisers, Abstract 24566 (T. D. 31207).

[Decision affirmed in part, reversed in part.]

Brown & Gerry (*James L. Gerry* and *Allan R. Brown* of counsel) for appellants.

D. Frank Lloyd, Assistant Attorney General (*Charles E. McNabb* on the brief), for the United States.

Before MONTGOMERY, SMITH, BARBER, DE VRIES and MARTIN, Judges.

SMITH, Judge, delivered the opinion of the court:

The collector of customs at the port of New York classified certain leathers imported into the country as leather not specially provided for and assessed it for duty at 15 per cent ad valorem under the provisions of paragraph 451 of the tariff act of August 5, 1909, the material parts of which are as follows:

451. Band, bend, or belting leather, rough leather, and sole leather, five per centum ad valorem; dressed upper and *all other leather*, calfskins tanned or tanned and dressed, kangaroo, sheep and goat skins (including lamb and kid skins) dressed and finished, other skins and bookbinders' calfskins, all the foregoing not specially provided for in this section, fifteen per centum ad valorem; * * * patent, japanned, varnished, or enameled leather weighing not over ten pounds per dozen hides or skins, twenty-seven cents per pound and fifteen per centum ad valorem; if weighing over ten pounds and not over twenty-five pounds per dozen, twenty-seven cents per pound and eight per centum ad valorem; if weighing over twenty-five pounds per dozen, twenty cents per pound and ten per centum ad valorem; pianoforte leather and pianoforte-action leather, and glove leather, twenty per centum ad valorem; leather shoe laces, finished or unfinished, fifty cents per gross pairs and ten per centum ad valorem; boots and shoes made of leather, fifteen per centum ad valorem * * *

The importers protested that the merchandise was either band, bend, or belting leather, or rough or sole leather, dutiable at 5 per cent ad valorem under said paragraph 451 or that it was grain or split leather dutiable at 7½ per cent ad valorem under the provisions of paragraph 450, which reads as follows:

450. Hides of cattle, raw or uncured, whether dry, salted, or pickled, shall be admitted free of duty: *Provided*, That on and after October first, nineteen hundred and nine, *grain*, buff, and *split leather* shall pay a duty of seven and one-half per centum

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ad valorem; that all boots and shoes, made wholly or in chief value of leather made from cattle hides and cattle skins of whatever weight, of cattle of the bovine species, including calfskins, shall pay a duty of ten per centum ad valorem; that harness, saddles and saddlery, in sets or in parts, finished or unfinished, composed wholly or in chief value of leather, shall pay a duty of twenty per centum ad valorem.

The Board of General Appraisers overruled the protest and the importers appealed to this court.

In the determination of this case the following questions are involved: First. Were the terms "grain leather" and "split leather" trade terms on and immediately prior to August 5, 1909, the date of the passage of the tariff act; and if they were, did their general, uniform, and definite meaning in the trade cover the merchandise in question? Second. If those terms had no general, uniform, and definite meaning to the trade at the time the tariff act of 1909 was passed, does any of the merchandise come within the common and ordinary meaning of the expressions "grain leather" and "split leather"? Third. Are the provisions of paragraph 450 limited to leathers made from the hides or skins of cattle, that is to say, to leathers of bovine origin?

As to the commercial meaning of the terms "grain leather" and "split leather" the importers produced the testimony of Alfred J. Worsdell, Louis J. Robertson, Gaza Pasqusz, John Donovan, and Thomas R. Fleming, who testified in effect that at the time the tariff act of 1909 was passed, and prior thereto, "grain leather" and "split leather" were trade names generally and well understood by all people dealing at wholesale in leathers; that "split leather" was then and is now the name given by the wholesale trade to the flesh side and "grain leather" the name given to the hair side of a tanned hide after the splitting of such hide by dividing it horizontally so as to separate the hair side from the flesh side; that "grain leather" and "split leather" are general designations, identifying the top and bottom of the tanned hide after splitting, and embrace various special kinds of one class or other, the specific names of which are determined by the use to which the leather is to be finally dedicated and the state and color of the finish; that is to say, an unfinished grain leather or an unfinished split leather is known as a "rough grain" or "rough split," but if finished and intended for the manufacture of orange-colored suit cases the grain or split is designated either as an "orange grain case leather" or as "an orange split case leather," as the case may be. The five witnesses produced by the Government do not deny that the flesh side of a split tanned hide is known as "split leather" and the grain side as "grain leather." They insist, however, that these terms are applicable in the trade only to leathers which are unfinished. This claim on the part of the Government's witnesses loses much, if not all of its weight, however, first, because they expressly admit that orders for finished grain or finished split leather,

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specifying the kind of finish and color desired, are recognized and perfectly understood in the trade and convey to the wholesale dealer accurate information as to what is wanted; second, because they wholly fail to give any name to finished grains and finished splits which would adequately, specifically, or properly describe them; and, third, because their statement that finished grains and finished splits are known to the trade as "case leather" or "bag leather" or "belt leather" is stripped of all probative force when it is considered that the words "case," "bag," or "belt" define the manufacturing use of the leather and nothing more, and that "case," "bag," and "belt" leathers may be either "splits" or "grains." True, the testimony shows that orders for "case leather," without giving the qualifying words "grain" or "split," are not unknown, but the effect of that testimony is nullified by the statement that such orders are construed to mean "grains," and that if "splits" are desired the order must so specify expressly. The testimony of the Government's witnesses and the findings of the board seem to be based entirely on the fact that an order for "grain leather" or "split leather," unaccompanied by any specification of the color or finish desired or of the use to which the leather is to be put, would be commercially construed to mean that the undyed, *unfinished*, hair side or flesh side of a hide which had been tanned and split was required. That such an order would be so interpreted may be admitted. It can not be admitted, however, nor does it follow from that interpretation of that particular kind of an order, that the trade recognizes no grains or splits which are colored or finished. Much less is such a conclusion warranted when it is considered that the record clearly discloses that the words "split" and "grain" are used, accepted, and understood by the trade in ordering colored or finished split leathers and that their actual use in that connection is absolutely necessary in order to define with certainty what is required, except in cases where trade custom has made it safe to assume that a grain and not a split is desired. Quite naturally an order for "grain leather" or "split leather" which was couched precisely in those words and said nothing as to quality or finish would be construed to mean an unfinished grain or split. Such an interpretation of such an order falls short of proving, however, that finished splits and finished grains are unknown to the trade, and especially does it fall short in view of the fact that there is direct, affirmative, and positive evidence to the contrary from witnesses on both sides of the case.

We think the conflict of testimony in this case is more apparent than real, and that the statements of the several witnesses may be readily reconciled on the basis, first, that "grains" and "splits" define the two general classes of split leathers; second, that these general classes are subdivided into various subordinate classes

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according to color and finish, to which appropriate names are given indicating such color and finish; third, that the use of the names of such subordinate classes in ordering is forced by the necessity of expressing what color and what finish on the split or grain is wanted. If, however, we consider the case from the standpoint that the witnesses really differ as to whether there is any such thing known to the trade as a finished grain or finished split, we must still hold that there is a preponderance of evidence in favor of the contention of the importer. Disregarding the fact that Schwartzwaelder, a witness for the Government, defined a split to be the flesh side of a hide that is *finished* or *unfinished;* that other Government witnesses referred to finished and unfinished splits and grains; and that all of them admitted that orders for finished grains and splits of a certain color would be understood by the trade and unmistakably describe what was wanted, the circumstance that three of the five Government witnesses had comparatively little experience with the merchandise imported and did not deal to any great extent in finished grains and splits militates against the weight which might otherwise be accorded to their testimony. Naturally, witnesses whose trade was largely confined to the unfinished article would, in good faith, be disposed to believe and to testify that in the trade there were no "grain leathers" or "split leathers" which were finished, but their testimony in that behalf should not be permitted to counterbalance or outweigh the evidence of witnesses of wider experience. Moreover, even if the witnesses for the Government and for the importer be considered so much at variance that no commercial meaning can be attached to the terms "grain leather" and "split leather," and that the common, ordinary meaning of those expressions must therefore be accepted, we fail to see how that state of the case aids or assists the Government's contention. As popularly understood, "grain leather" would signify a leather which had a grain and "split leather" a leather which had been split, and with such as the meaning of the terms some of the leathers would clearly be included in the former and all of them within the latter designation.

We assume from the decision of the board and the briefs of counsel that the seal splits or seal split leathers mentioned in the record are not made from the hides of bovine animals. As this court has already decided, in Tilge *v.* United States (T. D. 31662), that paragraph 450 does not cover leathers made from the hides or skins of animals which are not cattle of the bovine species, we must therefore hold that the board was correct in excluding from the provisions of that paragraph the seal splits or seal split leathers in question.

The decision of the Board of General Appraisers as to grain leathers or split leathers made from the hides of animals other than those of the bovine species is *affirmed.* As to the other leathers it is *reversed.*

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(T. D. 31978.)

Mushrooms in tins.

CHOY CHONG WOH & CO. ET AL. *v.* UNITED STATES (No. 595).

MUSHROOMS IN TINS PACKED IN WOODEN CASES.

Mushrooms contained in tins, and inclosed in differing numbers of tins, and in wooden cases, may not be deemed mushrooms, cut, sliced, or dried in undivided packages of a given weight and dutiable as such, but are plainly mushrooms contained in tins and are dutiable per pound, the weight of the immediate coverings included, under the first clause of paragraph 251, tariff act of 1909.—United States *v.* Yamashita (1 Ct. Cust. Appls., 341; T. D. 31435).

United States Court of Customs Appeals, October 16, 1911.

APPEAL from Board of United States General Appraisers, Abstract 24666 (T. D. 31236).

[Decision affirmed.]

Brown & Gerry (*James L. Gerry* and *Allan R. Brown* of counsel) for appellants.

D. Frank Lloyd, Assistant Attorney General (*W. A. Robertson* on the brief), for the United States.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

MONTGOMERY, Presiding Judge, delivered the opinion of the court:

The appeal covers mushrooms in tins contained in outside wooden cases. Some of the cases contain 20 and others 2 to 4 tins. They were classified for duty at 2½ cents per pound, including the weight of the immediate or tin coverings, and are claimed to be dutiable at the same rate excluding the weight of the tins or immediate coverings, both assessment and claim being made under the applicable provisions of paragraph 251 of the tariff act of 1909. That paragraph reads:

251. Beans, peas, mushrooms, and truffles, prepared or preserved, or contained in tins, jars, bottles, or similar packages, two and one-half cents per pound, including the weight of immediate coverings; mushrooms, cut, sliced, or dried, in undivided packages containing not less than five pounds, two and one-half cents per pound.

The Board of General Appraisers sustained the action of the collector and overruled the protest. From their decision an appeal is taken.

We think the provisions of paragraph 251 are not difficult of interpretation. The first clause of the section imposes a duty alike upon immediate coverings and the contents consisting of beans, peas, and truffles. Whatever the immediate coverings may be, whether tins, jars, bottles, or similar packages, their weight is to be considered in fixing the duty.

The concluding portion of the paragraph relates to mushrooms, cut, sliced, or dried, in undivided packages containing not less than 5 pounds. Clearly mushrooms are provided for in the first portion of

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the paragraph, and both the mushrooms and the coverings are dutiable thereunder unless the importation answers to all the conditions of the latter part of the paragraph, namely, mushrooms, cut, sliced, or dried, and in undivided packages containing not less than 5 pounds.

The question is whether packages such as those in question are, within the meaning of this paragraph, undivided packages. We think it very clear that they are not. If it were more doubtful, the fact that the first part of the paragraph makes dutiable the immediate coverings would indicate that the words "undivided packages" relate to importations which do not contain other immediate coverings of the merchandise.

But the word "packages," as used to describe importations, has received a construction by this court in United States *v.* Yamashita (1 Ct. Cust. Appls., 341; T. D. 31435), which is inconsistent with the contention of the importer here. See also the case of Keith *v.* State of Alabama (91 Ala., 2).

It must be held that these packages, containing as they did numerous other immediate coverings, do not fall under the last part of the paragraph, but are definitely described in the first portion thereof, and that the decision of the Board of General Appraisers was correct.

Affirmed.

(T. D. 31979.)

Regulations for entry of merchandise for exhibition at expositions to to be held by the Merchants and Manufacturers' Exchange of New York.

TREASURY DEPARTMENT, *October 30, 1911.*

To all officers of the customs and others concerned:

Attention is invited to the provisions of the act of Congress approved March 4, 1911, for the free entry of articles imported for exhibition at expositions to be held at New York during the years 1911 and 1912 by the Merchants and Manufacturers' Exchange of New York, which act reads as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all articles which shall be imported from foreign countries for the sole purpose of exhibition at expositions of the arts, sciences, and industries and products of the soil, mine, and sea, to be held in expositions to be held in nineteen hundred and eleven and nineteen hundred and twelve by the Merchants and Manufacturers' Exchange of New York, in the buildings in the city of New York owned or controlled by the Merchants and Manufacturers' Exchange, a corporation organized under the laws of the State of New York, upon which there shall be a

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tariff or customs duty, shall be admitted free of the payment of such duty, customs, fees, or charges, under such regulations as the Secretary of the Treasury shall prescribe; but it shall be lawful at any time during the exposition to sell, for delivery at the close thereof, any goods or property imported for and actually on exhibition in the exposition buildings, subject to such regulations for the security of the revenue and for the collection of import duties as the Secretary of the Treasury may prescribe: *Provided*, That all such articles when sold or withdrawn for consumption or use in the United States shall be subject to the duty, if any, imposed upon such articles by the revenue laws in force at the date of withdrawal; and on articles which shall have suffered diminution or deterioration from incidental handling and necessary exposure the duty, if paid, shall be assessed according to the appraised value at the time of withdrawal for consumption or use; and the penalties prescribed by law shall be enforced against any person guilty of any illegal sale or withdrawal: *Provided further*, That nothing in this section contained shall be construed as an invitation, express or implied, from the Government of the United States to any foreign government, state, municipality, corporation, partnership, or individual to import any such articles for the purpose of exhibition at the said exposition.

SEC. 2. That the Secretary of the Treasury may, in his discretion, extend the time of the expositions for a period not exceeding six months after December thirty-first, nineteen hundred and twelve.

The following regulations are hereby prescribed to carry the provisions of said act into effect:

1. All packages containing imported merchandise intended for such expositions shall be plainly marked "Merchants and Manufacturers' Exchange Exposition" and shall bear separate serial numbers.

2. All importations intended for such expositions and valued at more than $100 must be covered by consular invoices certified before an American consul. Such invoices should contain an itemized statement of the contents of each case or package and should show that the merchandise covered thereby is destined to the port of New York and is intended for exhibition purposes at the said expositions.

3. Prior to the entry of any merchandise hereunder the Merchants and Manufacturers' Exchange of New York shall give to the collector of customs of New York a bond in the penal sum of $100,000 conditioned for the payment of all lawful duties upon any imported merchandise admitted free of duty hereunder, which is not duly entered, within 30 days after the close of such exposition, for consumption, for warehouse, or for exportation.

4. The collector of customs at New York will detail an acting deputy collector and inspector of customs to act as his representative at said expositions and shall station inside the exposition buildings during the expositions to be held as many additional customs officers and employees as may be necessary to properly protect the revenue.

5. Merchandise so intended for exhibition purposes at the said expositions arriving at ports other than the port of New York should be entered for immediate transportation without appraisement to the latter port in the manner provided by the general customs regulations.

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6. Upon the arrival of such merchandise at the port of New York the same should be entered on a special form of entry to ead substantially as follows:

ENTRY FOR EXHIBITION.

Entry No. —.

Entry of merchandise imported at the port of New York by ——, in the S. S. —— from ——, on the —— day of ——, 191—, for exhibition purposes under the act of March 4, 1911.

Marks.	Numbers.	Packages and contents.	Quantity.	Invoice value.

——— ———, *Importer.*

7. Upon such entry being made the collector will, with the concurrence of the naval officer, issue a special permit for the transfer of the merchandise covered thereby to the buildings in which the said exposition is to be held. Upon the receipt of the merchandise at such buildings the same will be given a tentative appraisement prior to the placing of such merchandise on exhibition. Such appraisement shall be for the sole purpose of ascertaining definitely the dutiable value of any article not accounted for within 30 days after the close of the exposition. All imported merchandise so received in such buildings shall be kept segregated from domestic merchandise and imported duty-paid merchandise and shall not be removed from the exposition buildings during the continuance of such exposition except upon a withdrawal thereof for exportation, which may be made at any time during the progress of the exposition.

8. If for any reason any exhibitor should not desire merchandise consigned to him to be delivered immediately upon its arrival to such exposition buildings, he should so indicate to the collector in writing, who will cause such merchandise to be placed in a bonded warehouse under a "general order permit" at the exhibitor's expense, and such merchandise may be entered at any time within one year thereafter for exhibition, as herein provided, for the payment of duty, for warehouse, or for exportation.

9. The whole or any part of the merchandise covered by any invoice or entry may be sold at any time during the exposition, but no withdrawal thereof for warehouse or consumption shall be made until after the close of such exposition. Merchandise so entered for exhibition purposes, as hereinbefore provided and for which no withdrawal for exportation has been previously made, must be promptly entered at the close of the said exposition for consumption, for warehouse, or for exportation, and upon such entry the merchandise shall be appraised and due allowance made for diminution or deterioration

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by reason of exposure or incidental handling. Merchandise not so entered within 30 days after the close of such exposition will be sent to general order stores as unclaimed, and if remaining in such stores for a period of one year will be sold under the provisions of section 2973 of the Revised Statutes. If such merchandise be entered for warehouse upon the close of such exposition, the same must be withdrawn for consumption or for exportation within three years from the date of original importation thereof, in accordance with the provisions of section 2971 of the Revised Statutes, and if not withdrawn within such time the same will be treated as abandoned to the Government.

JAMES F. CURTIS, *Assistant Secretary.*

(T. D. 31980.)

Drawback on rubber cloths.

Drawback on rubber cloths manufactured by L. J. Mutty Co., of Boston, Mass., with the use of imported cotton, silk, woolen, and mohair cloths.

TREASURY DEPARTMENT, *October 30, 1911.*

SIR: Drawback is hereby allowed under section 25 of the tariff act of August 5, 1909, and the regulations promulgated thereunder (T. D. 31695 of June 16, 1911), on rubber cloths manufactured by L. J. Mutty Co., of Boston, Mass., with the use of imported cotton, silk, woolen and mohair cloths.

The allowance shall not exceed the net yardage exported, with an llowance to compensate for shrinkage, not in excess of 2 per cent of the exported quantity.

The manufacturers' sworn statement, dated October 16, 1911, is inclosed herewith for filing in your office.

Respectfully, JAMES F. CURTIS,
(86760.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Boston, Mass.*

(T. D. 31981.)

Buffalo hides.

Buffalo hides should be disinfected the same as hides of neat cattle.

TREASURY DEPARTMENT, *November 2, 1911.*

SIR: The department has received a letter from Messrs. E. L. Garvin & Co. requesting that you be informed whether or not disinfection certificates are required for buffalo hides.

Upon reference of the question to the Secretary of Agriculture, that officer advises the department that all buffalo hides should be

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disinfected the same as hides of neat cattle, under the provisions of Treasury Department Circular No. 23, of May 2, 1910 (T. D. 30583).

You will please be governed accordingly.

Respectfully, JAMES F. CURTIS,
(74465.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 31982.)

Drawback on flavoring extracts.

Drawback on flavoring extracts manufactured by the Baker Extract Co., of Springfield, Mass., with the use of imported alcohol.

TREASURY DEPARTMENT, *November 2, 1911.*

SIR: Drawback is hereby allowed under section 25 of the tariff act of August 5, 1909, and the regulations promulgated thereunder (T. D. 31695 of June 16, 1911), on flavoring extracts manufatured by the Baker Extract Co., Springfield, Mass., with the use of imported alcohol.

The allowance may equal the quantity of alcohol appearing in the exported extracts, with the following additions thereto to compensate for loss: Vanilla, 8½ per cent; almond, 2.6 per cent; orange and lemon, 1.2 per cent; peppermint, 0.4 per cent; checkerberry and wintergreen, 0.8 per cent.

These figures are based upon alcohol 190 proof. Sworn schedules may be filed covering other extracts, and upon verification, drawback may be allowed under this decision.

The manufacturers' sworn statement, dated September 23, 1911, is herewith inclosed for filing in your office.

Respectfully, JAMES F. CURTIS,
(88705.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *Boston, Mass.*

(T. D. 31983.)

Drawback on mirrors and cabinets.

Drawback on mirrors and cabinets manufactured by Conant Bros. Co., of Somerville, Mass., with the use of circular glass cut from imported rectangular-shaped glass.—T. D. 30784 of July 14, 1910, extended.

TREASURY DEPARTMENT, *November 3, 1911.*

SIR: The department's regulations of July 14, 1910 (T. D. 30784), providing for the allowance of drawback on mirrors and cabinets manufactured by Conant Bros. Co., of Somerville, Mass., with the use of imported cast plate glass, silvered and unsilvered, beveled and unbev-

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eled, are hereby extended to cover the manufacture of mirrors and cabinets by the said company with the use of circular glass cut from imported rectangular-shape glass in accordance with the sworn statement dated October 23, 1911, transmitted herewith for filing in your office.

The quantity of imported cast plate glass which may be taken as the basis for the allowance of drawback may be that used as declared in the entry, provided it shall not exceed for each circular-shape glass a rectangular-shape glass, of which each of the four sides are the same length and any one of which is equal in length to the diameter of the circular glass.

Respectfully, JAMES F. CURTIS,
(75709.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *Boston, Mass.*

(T. D. 31984.)

Drawback on Bloodine.

Drawback on "Bloodine" manufactured by the Bloodine Corporation, of Malden, Mass., with the use of domestic tax-paid alcohol.

TREASURY DEPARTMENT, *November 3, 1911.*

SIR: Drawback is hereby allowed under section 25 of the tariff act of August 5, 1909, and the regulations promulgated thereunder (T. D. 31695 of June 16, 1911), on a medicinal preparation known as "Bloodine," manufactured by the Bloodine Corporation, of Malden, Mass., with the use of domestic tax-paid alcohol.

The allowance shall not exceed 18 per cent of absolute alcohol, based on the exported quantity.

The manufacturers' sworn statement, dated October 26, 1911, is inclosed herewith for filing in your office.

Respectfully, JAMES F. CURTIS,
(91432.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *Boston, Mass.*

(T. D. 31985.)

Drawback on walnuts.

Drawback on walnuts imported by John Leslie & Co., of Chicago, Ill., and sorted, bleached, and cleaned and graded prior to exportation.

TREASURY DEPARTMENT, *November 4, 1911.*

SIR: Drawback is hereby allowed under section 25 of the tariff act of August 5, 1909, and the regulations promulgated thereunder (T. D. 31695 of June 16, 1911), on the exportation of walnuts imported

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by John Leslie & Co., of Chicago, Ill., and sorted, bleached, and cleaned and graded prior to exportation.

The allowance shall not exceed the actual quantity exported, with an addition thereto of 3 per cent to compensate for worthless waste.

The manufacturers' sworn statement, dated July 31, 1911, is inclosed herewith for filing in your office.

Respectfully, R. O. BAILEY,
(90351.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *Chicago, Ill.*

(T. D. 31986—G. A. 7294.)

Bottles and jars containing ad valorem merchandise.

1. Bottles and jars containing merchandise subject to ad valorem rates of duty, being specifically excepted from the provisions of paragraph 97, tariff act of 1909, by the phrase in parentheses "(except such as contain merchandise subject to an ad valorem rate of duty, or to a rate of duty based in whole or in part upon the value thereof which shall be dutiable at the rate applicable to their contents)," are, in accordance with the provisions of subsection 18 of section 28, for "bottles, jars, demijohns, carboys, * * * whether holding liquids or solids," dutiable at the ad valorem rates applicable to their contents.

2. Congress having added as new matter in subsection 18 of section 28, tariff act of 1909, the words "bottles, jars, demijohns, carboys, * * * whether holding liquids or solids," it is clear that it intended to modify the law as construed by the Circuit Court of Appeals, Second Circuit, in the case of United States *v.* Hensel (106 Fed. Rep., 70), wherein it was held that such bottles were not dutiable as containers at the ad valorem rate applicable to their contents.

United States General Appraisers, New York, November 2, 1911.

In the matter of protests 505370, etc., of John A. Conkey & Co. et al. against the assessment of duty by the collector of customs at the port of Boston.

Before Board 1 (SHARRETTS, MCCLELLAND, and CHAMBERLAIN, General Appraisers; MCCLELLAND, G. A., absent).

SHARRETTS, *General Appraiser:* The issue here presented is purely one of law, involving the dutiability of plain flint-glass bottles and jars suitable for use as and of the character ordinarily employed as containers for the holding or transportation of merchandise. The stipulation filed with the papers concedes the facts to be that these bottles and jars are imported filled and the contents thereof were correctly assessed with various ad valorem rates of duty, in each instance less than 40 per cent ad valorem. The collector exacted 40 per cent ad valorem duty on the containers under paragraph 97 of the act of 1909, against which assessment the importers duly protested, claiming that the value of said bottles and jars should have been included in that of their contents and subjected to duty at the rate applicable to such contents in accordance with the provisions of section 28, sub-

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section 18, of the administrative act, as amended by the act of 1909. The two provisions of law, so far as they are pertinent to the issue, are:

PAR. 97. Plain * * * flint * * * glass bottles * * * jars * * *, filled or unfilled, not otherwise specially provided for in this section, and whether their contents be dutiable or free (except such as contain merchandise subject to an ad valorem rate of duty, or to a rate of duty based in whole or in part upon the value thereof, which shall be dutiable at the rate applicable to their contents), shall pay duty as follows: If holding more than one pint, one cent per pound; if holding not more than one pint and not less than one-fourth of a pint, one and one-half cents per pound; if holding less than one-fourth of a pint, fifty cents per gross: *Provided*, That none of the above articles shall pay a less rate of duty than forty per centum ad valorem: *Provided further, That the terms bottles, vials, jars, demijohns, and carboys, as used herein, shall be restricted to such articles when suitable for use as and of the character ordinarily employed as containers for the holding or transportation of merchandise, and not as appliances or implements in chemical or other operations.*

SEC. 28 (subsec. 18). That whenever imported merchandise is subject to an ad valorem rate of duty, or to a duty based upon or regulated in any manner by the value thereof, the duty shall be assessed upon the actual market value or wholesale price thereof * * * including the value of all cartons, cases, crates, boxes, sacks, casks, barrels, hogsheads, *bottles, jars, demijohns, carboys, and other containers or coverings, whether holding liquids or solids* * * *.

The parts italicized in the provision appear for the first time in the present act (1909). This was referred to by the Court of Customs Appeals in the case of Spielman *v.* United States (T. D. 31626), as follows:

There the matter rested until 1890, when Congress seems to have made a careful investigation, as a result of which it evidently came to the conclusion that good customs administration required that the value of certain containers and coverings should, as a general proposition, be regarded as a part of the value of the articles held by them. At all events, it seems to have committed itself to that policy to a certain extent by the act of June 10, 1890, and since the passage of that act there has been no general return to the policy of considering ad valorem goods and the coverings and containers thereof as separate entities for tariff purposes. In fact, the practice of so considering them appears to have caused so much embarrassment to appraising officers, and to have been productive of so much trouble, fraud, and litigation, that in later years the legislative tendency has been all the other way. See Austin, Nichols & Co. *v.* United States (171 Fed. Rep., 79–80). Indeed, subsection 18 of section 28 of the act of August 5, 1909, enlarges section 19 of the act of June 10, 1890, so as to include casks, barrels, hogsheads, bottles, jars, demijohns, carboys, and other containers or coverings, whether holding liquids or solids. From this extension of the language of the act of June 10, 1890, it may be fairly concluded that the Legislature has definitely settled to its satisfaction that for the ascertainment of dutiable value it is not practicable, generally speaking, to separate ad valorem goods from their usual containers or coverings, and that for tariff purposes the value of such containers or coverings should, as a rule, be considered as a part of the value of the goods.

The significance of this new matter will become apparent when we turn to the litigated cases that arose under corresponding provisions of prior acts. The Supreme Court in the case of United States *v.* Nichols (186 U. S., 298, 303) said:

We have no doubt that the customs administrative act applies to coverings generally, but we think that in view of the several sections of the act of 1894 upon the

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subject of glass bottles Congress must have intended the words "coverings of any kind" should not apply to them, but that the other sections must be looked to exclusively to determine their rates of duty.

The inclusion of the word "bottles" among coverings in subsection 18 of the present act could have but the one purpose, and that to make bottles filled with merchandise subject to ad valorem rates pay the same duty as the contents, which, according to the decision cited, was not the case under the act of 1897. The addition of the words "whether holding liquids or solids" was palpably intended to correct the erroneous interpretation of the law laid down by the Board of General Appraisers and the Circuit Court for the Southern District of New York, reversed by the Court of Customs Appeals in Austin *v.* United States (1 Ct. Cust. Appls., 465; T. D. 31508). Finally, the purpose of the clause limiting the bottles provided for in paragraph 97 to those intended as coverings, their elimination from that paragraph by the exception in parentheses, and their inclusion in section 18 by identical language, is so obvious as hardly to admit of argument that Congress intended to modify the law as construed by the Circuit Court of Appeals, Second Circuit, in United States *v.* Hensel (106 Fed. Rep., 70). The board in G. A. 4011 (T. D. 18613) held that the exception in parentheses contained in paragraph 99 of the act of 1897 had the effect of taking bottles filled with merchandise subject to ad valorem rates of duty out of the paragraph, leaving included in that paragraph only bottles filled with merchandise exempt from duty or subject to specific rates, and that consequently the prescribed rates, including the alternative minimum rate of 40 per cent, applied only to what was left. An appeal was taken from this decision by the Treasury Department, but was apparently abandoned, as the case never came to trial. The board, however, in G. A. 4055 (T. D. 18742) reached a different conclusion. From this decision the importer appealed, and the board was reversed by the Circuit Court (Hensel *v.* United States, 99 Fed. Rep., 259), but it in turn was reversed by the appellate court in United States *v.* Hensel (106 Fed. Rep., 70), Judge Lacombe, who wrote the opinion for the court, saying in part:

> If the exception in the parentheses had merely excepted the same kind of bottles from duty under paragraph 99, leaving them to be found classified for duty under some other paragraph, it might be said that the exception is out of the whole paragraph, and the proviso be held to qualify only what is left.

Congress, having knowledge of this decision, inserted as new matter, in paragraph 97 of the act of 1909, the proviso:

> That the terms bottles, vials, jars, demijohns, and carboys, as used herein, shall be restricted to such articles when suitable for use as and of the character ordinarily employed as containers for the holding or transportation of merchandise, and not as appliances or implements in chemical or other operations.

Having thus restricted the articles provided for in paragraph 97 to coverings, we find the legislators in subsection 18 of section 28 then

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inserted as new matter the enumeration of "bottles, jars, demijohns, and carboys" among other containers or coverings, thus supplying the requisite enumeration for duty under other paragraphs of the act of the articles excepted from the provisions of paragraph 97, and, in consonance with the views of the court, removed the articles from that paragraph, leaving the proviso relative to the 40 per cent rate to qualify only what was left.

Any other construction of the law involves an irreconcilable repugnancy between paragraph 97 and subsection 18 of the act of 1909. If bottles in the nature of coverings, imported filled with merchandise dutiable at the ad valorem rate of 25 per cent are assessed with duty at 40 per cent by force of the proviso to paragraph 97, then the provision in subsection 18 that identical bottles shall pay duty at 25 per cent ad valorem, the rate applicable to their contents, is but an aggregation of idle words. It may be suggested that paragraph 97 provides for glass bottles, while subsection 18 does not limit bottles to glass. The word bottles without qualifying words includes those made of glass, stone, or any other material, and, as said by the Court of Customs Appeals in T. D. 31508, *supra*, "we are unable to perceive how any distinction can be made for the purposes of the issue before us between glass bottles and stone bottles." At any rate, carboys and demijohns are never made of any material other than glass, and as these articles are named in both paragraph 97 and subsection 18 the rule applicable to them must be held alike applicable to bottles.

Whatever may have been the proper interpretation of the act of 1897 with regard to bottles imported filled with ad valorem merchandise, the changes embodied in paragraph 97 and subsection 18 of the act of 1909 indicate clearly that Congress in the present act intended that bottles and jars filled with ad valorem goods were to be assessed with duty at the rate applicable to their contents. We so hold and sustain the protests, the collector's decision in each case being reversed.

(T. D. 31987.)

Abstracts of decisions of the Board of General Appraisers.

Board 1.—Sharretts, McClelland, and Chamberlain. *Board 2.*—Fischer, Howell, and Cooper. *Board 3.*—Waite, Somerville, and Hay.

BEFORE BOARD 1, OCTOBER 30, 1911.

No. 26986.—TOY MAGIC-LANTERN SLIDES—TOY MAGIC-LANTERN CHIMNEYS.—Protests 417817, etc., of L. H. Mace & Co. (New York). Opinion by Sharretts, G. A.

Protests sustained as to glass slides and chimneys for toy magic lanterns. United States *v.* Borgfeldt (1 Ct. Cust. Appls., 370; T. D. 31455) and Abstract 26659 (T. D. 31883) followed.

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No. 26987.—Toy Jewelry—Imitation Jet—Cut-Paste Articles—Steel Watch Chains.—Protests 158279, etc., of Adolph Strauss & Co. et al. (New York). Opinion by Sharretts, G. A.

Protests sustained as to toy jewelry, imitation jet, cut paste articles, and iron or steel watch chains. G. A. 7251 (T. D. 31786), United States *v.* Beierle (1 Ct. Cust. Appls., 457; T. D. 31506), G. A. 6995 (T. D. 30444), and G. A. 6349 (T. D. 27305) followed.

No. 26988.—Glass Disks for Goggles.—Protests 389597, etc., of Motor Car Equipment Co. et al. (New York). Opinion by Sharretts, G. A.

Protests sustained as to glass disks for automobile goggles. United States *v.* American Thermo-Ware Co. (T. D. 31571) followed.

No. 26989.—Millinery Ornaments—Rosaries—Imitation Precious Stones—Wax Beads.—Protests 101189, etc., of Marcel Schmitt, and protest 244083 of Veit, Son & Co. (New York). Opinions by Sharretts, G. A.

Protests sustained as to millinery ornaments, rosaries, imitation precious stones, and wax beads imported under the act of 1897. G. A. 6139 (T. D. 26679), G. A. 6995 (T. D. 30444), G. A. 6374 (T. D. 27382), G. A. 6130 (T. D. 26653), Abstract 5636 (T. D. 26248), G. A. 6658 (T. D. 28391), G. A. 6380 (T. D. 27420), G. A. 6639 (T. D. 28297), G. A. 7052 (T. D. 30730), G. A. 7053 (T. D. 30731), Abstract 16902 (T. D. 28438), and Abstract 18453 (T. D. 28850) followed.

No. 26990.—Moving-Picture Films.—Protest 357078 of Pitt & Scott (New York). Opinion by Sharretts, G. A.

Protest sustained as to films for moving-picture machines. United States *v.* Sussfeld (1 Ct. Cust. Appls., 51; T. D. 31030) followed.

No. 26991.—Articles of Personal Adornment—Articles of Utility—Smokers' Articles—Beaded Articles—Penknives.—Protests 448667 and 488988, etc., of B. Altman & Co., protest 509124 of Baum, Cohen & Shire, protest 506756 of Bloomingdale Bros., protests 450496, etc., of Cohn & Rosenberger, protest 439975 of A. Frankfield, protest 511891 of Samstag & Hilder Bros., protests 452659, etc., of John Wanamaker et al., and protest 484531 of Wiener Bros. (New York). Opinions by Sharretts, G. A.

Cigarette cases, beaded bags, silver pocket knives, gun-metal mesh bags, silver coin boxes, and vanity boxes, classified as articles of personal adornment under paragraph 448, tariff act of 1909, were claimed to be dutiable as smokers' articles (par. 475), beaded articles (par. 421), pocket knives (par. 152), or according to their component material of chief value. Protests sustained. G. A. 7102 (T. D. 30942), G. A. 7193 (T. D. 31428), T. D. 30785, Abstract 25670 (T. D. 31624), and G. A. 7129 (T. D. 31989) followed.

No. 26992.—Brass Mesh Bags.—Protest 394829 of Joel Bailey Davis Co. (Philadelphia.

Metal mesh bags composed of brass and classified as articles of personal adornment under paragraph 448, tariff act of 1909, were claimed to be dutiable as manufactures of metal (par. 199).

Sharretts, *General Appraiser:* * * * In G. A. 7129 (T. D. 31089) this board held that "as Congress has differentiated mesh bags and purses from the general class of goods provided for in paragraph 448 of the tariff act of 1909, only such as are made in chief value of silver, German silver, or white metal are dutiable thereun-

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der." This decision was appealed to the Court of Customs Appeals, but dismissed by consent. The merchandise in the case at bar is made of metal mesh composed of brass, which metal is not enumerated in that part of paragraph 448 referring to mesh bags or purses. Upon the authority of G. A. 7129, *supra*, we find that the articles are dutiable at 45 per cent ad valorem under paragraph 199. The protest is sustained and the collector's decision reversed.

No. 26993.—PROTESTS OVERRULED.—Protests 372521-29754, etc., of Butler Bros., and protests 221651-23045, etc., of C. D. Stone & Co. (Chicago), protest 484312 of Aitken, Son & Co., protest 481354 of Bailey, Green & Elger, protests 419542, etc., of Bertram & Rover et al., protests 478549, etc., of George Borgfeldt & Co., protest 482019 of D. S. Hesse & Bro., protest 494891 of Haughton & Lee, protest 476460 of Knauth, Nachod & Kuhne, protests 420623, etc., of P. C. Kuyper & Co. et al., and protest 403656 of Rothschild-Kuno Button Works (New York), protests 401067, etc., of Gimbel Bros. et al., and protests 289541, etc., of Williams, Brown & Earle et al. (Philadelphia), and protest 418021 of L. W. Suter (Port Townsend). Opinions by Sharretts, G. A.

Protests overruled for want of merit.

No. 26994.—WILLOW BASKETS.—Protests 441072, etc., of Morimura Bros. (New York), protest 513713 of George S. Bush & Co. (Portland, Oreg.), and protests 520909, etc., of George Borgfeldt & Co. (Port Townsend). Opinions by McClelland, G. A.

Protests sustained as to willow baskets. Brody *v.* United States (T. D. 31573) followed.

No. 26995.—FURS, UNDRESSED—FUR WASTE.—Protests 468920, etc., of C. B. Richard & Co. (New York). Opinion by McClelland, G. A.

Protests sustained as to undressed furs. United States *v.* Hatters' Fur Exchange (1 Ct. Cust. Appls., 198; T. D. 31237) followed.

No. 26996.—PROTEST OVERRULED.—Protest 425753 of L. F. Robertson & Sons (New York). Opinion by McClelland, G. A.

Protest overruled for want of merit.

No. 26997.—KIPPERED HERRING.—Protests 508996-37766, etc., of Sprague, Warner & Co. et. al. (Chicago). Opinion by Chamberlain, G. A.

Protests sustained as to kippered herring. United States *v.* Rosenstein (1 Ct. Cust. Appls., 304; T. D. 31357) followed.

No. 26998.—HYDROXIDE OF CHROME.—Protest 271981 of Continental Color & Chemical Co. (Boston), protests 451215, etc., of Farbenfabriken of Elberfeld Co. (New York). Opinions by Chamberlain, G. A.

Protests sustained as to hydroxide of chrome. United States *v.* Continental Color & Chemical Co. (T. D. 31679) followed.

No. 26999.—PROTESTS OVERRULED.—Protests 516268-37888, etc., of R. B. Boak & Co. et. al. (Chicago), protest 523777 of George S. Bush & Co. (Portland, Oreg.), and protest 563802 of Rice-Stix Dry Goods Co. (St. Louis). Opinions by Chamberlain, G. A.

Protests overruled for want of merit.

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BEFORE BOARD 2, OCTOBER 30, 1911.

No. 27000.—CYLINDRICAL METAL CONTAINERS.—Protest 511113 of Roessler & Hasslacher Chemical Co. (Detroit) and protest 409765 of A. Klipstein & Co. (Jacksonville). Opinions by Fischer, G. A.

Thin sheet-metal drums containing bleaching powder and thin sheet-metal drums containing red powdered arsenic in wooden overcasks, which were classified as cylindrical or tubular vessels under paragraph 151, tariff act of 1909, were claimed to be the usual containers of free merchandise or subject to specific duty and therefore nondutiable. Protests sustained. United States *v.* Garramone (T. D. 31577) and United States *v.* Braun (T. D. 31596) followed.

No. 27001.—LAMPS FOR TOY MAGIC LANTERNS.—Protest 480530 of B. Illfelder & Co. (Philadelphia). Opinion by Fischer, G. A.

Lamps for toy magic lanterns, classified as manufactures of metal under paragraph 199, tariff act of 1909, were claimed to be dutiable as toys (par. 431). Protest sustained. United States *v.* Borgfeldt (1 Ct. Cust. Appls., 370; T. D. 31455) followed.

No. 27002.—ROUGH-TRIMMED MICA.—Protest 505510 of General Electric Co. (Albany). Opinion by Fischer, G. A.

Protest sustained as to rough-trimmed mica. United States *v.* Myers (1 Ct. Cust. Appls., 257; T. D. 31301) followed.

No. 27003.—WATERPROOF WRAPPING PAPER—OILED AND COTTON-LINED PAPER.—Protests 505514, etc., of R. F. Downing & Co. et al. (Boston). Opinion by Fischer, G. A.

Protests sustained as to waterproof wrapping paper. Abstract 25520 (T. D. 31568) followed.

No. 27004.—PROTESTS OVERRULED.—Protests 172951, etc., of H. Robinson et al. (New York). Opinion by Howell, G. A.

Protests overruled for want of merit.

BEFORE BOARD 1, OCTOBER 31, 1911.

No. 27005.—MILLINERY ORNAMENTS—IMITATION PRECIOUS STONES—WAX BEADS—METAL BEADS—ROSARIES.—Protests 41803f, etc., of H. Wolff & Co. (New York). Opinion by Sharretts, G. A.

Protests sustained as to millinery ornaments, imitation precious stones, wax beads, metal beads, rosaries, chatelaine bags, bonbon boxes, and other similar articles of utility imported under the act of 1897. G. A. 6139 (T. D. 26679), G. A. 6995 (T. D. 30444), G. A. 6374 (T. D. 27382), G. A. 6130 (T. D. 26653), G. A. 6868 (T. D. 29558), Tiffany *v.* United States (131 Fed. Rep., 398; T. D. 25316), G. A. 6658 (T. D. 28391), G. A. 6380 (T. D. 27420), G. A. 5624 (T. D. 25152), G. A. 6639 (T. D. 28297), G. A. 7052 (T. D. 30730), G. A. 7053 (T. D. 30731), G. A. 5126 (T. D. 23681), Abstract 21893 (T. D. 30037), G. A. 5664 (T. D. 25254), and G. A. 6330 (T. D. 27255) followed.

No. 27006.—GLASS DISKS FOR GOGGLES.—Protests 378227, etc., of Motor Car Equipment Co. et al. (New York). Opinion by Sharretts, G. A.

Protests sustained as to glass disks for automobile goggles. G. A. 7252 (T. D. 31787) followed.

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No. 27007.—Articles of Personal Adornment—Articles of Utility—Mesh Bags—Coin Cases—Imitation Jet—Powder Boxes—Mirrors—Smokers' Articles.—Protest 488977 of B. Altman & Co., protests 497782, etc., of Cohn & Rosenberger, protest 510888 of L. W. Levy & Co., protests 515939, etc., of R. H. Macy & Co., protest 437511 of Mark & Meyer Importing Co., and protests 423700, etc., of Massce & Co. (New York). Opinions by Sharretts, G. A.

Protests sustained as to gun-metal mesh bags, coin cases, imitation jet articles, powder boxes, mirrors, and smokers' articles on the authority of G. A. 7129 (T. D. 31089) and United States *v.* Beierle (1 Ct. Cust. Appls., 457; T. D. 31506).

No. 27008.—Protests Overruled.—Protests 461373, etc., of Knauth, Nachod & Kuhne (New York), and protests 505484, etc., of Bailey, Banks & Biddle et al. (Philadelphia). Opinions by Sharretts, G. A.

Protests overruled for want of merit.

No. 27009.—Protests Overruled.—Protests 410227, etc., of W. H. Stiner & Son et al. (New York). Opinion by McClelland, G. A.

Protests overruled for want of merit.

Before Board 2, October 31, 1911.

No. 27010.—Marble Clock Cases.—Protest 511983 of Stern Bros. (New York). Opinion by Fischer, G. A.

Protest sustained as to marble clock cases on the authority of Abstract 24458 (T. D. 31165).

No. 27011.—Glass Polishers—Machine Tools.—Protest 500822 of American Window Glass Co. (Pittsburgh). Opinion by Fischer, G. A.

The articles in question were tools used in polishing or taking scratches out of window glass, and consisted of a motor connected to a wheel or polishing tool. They were classified as manufactures of metal under paragraph 199, tariff act of 1909, and held dutiable as machine tools (par. 197). Protest sustained on the authority of Myers *v.* United States (1 Ct. Cust. Appls., 226; T. D. 31260).

No. 27012.—Cylindrical Metal Containers.—Protests 405927, etc., of A. Klipstein & Co. et al. (Boston), protests 508487, etc., of Amerman & Patterson et al., and protests 411385, etc., of A. Klipstein & Co. et al. (New York), protests 413113, etc., of Wilfred Schade & Co. et al. (Norfolk), and protests 401083, etc., of O. G. Hempstead & Son et al., (Philadelphia). Opinions by Fischer, G. A.

Protests sustained as to cylindrical metal containers. United States *v.* Braun (T. D. 31596), United States *v.* Garramone (T. D. 31577), and Abstract 26485 (T. D. 31851) followed.

No. 27013. Protests Overruled.—Protests 500742, etc., of Dana & Co. et al. (Baltimore), and protests 442303, etc., of Davies & Lawrence Co. et al., protests 502002, etc., of C. B. Richard & Co. et al., and protests 411526, etc., of A. A. Stilwell Co. et al. (New York). Opinions by Fischer, G. A.

Protests overruled for want of merit.

Before Board 3, October 31, 1911.

No. 27014. Hyacinth Bulbs.—Protests 505429-37691, etc., of International Forwarding Co. (Chicago). Opinion by Waite, G. A.

Protests sustained as to hyacinth bulbs. Breck *v.* United States (T. D. 31576) followed.

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No. 27015.—Coverings of Specific Duty and Free Goods.—Protests 421444 etc., of Rusch & Co. et al. (New York). Opinion by Hay, G. A.

Paper, cardboard, and pasteboard wrappers or containers of merchandise subject to specific duty or free of duty were held nondutiable, as claimed by the importers. United States *v.* Matagrin (1 Ct. Cust. Appls., 309; T. D. 31406) followed.

No. 27016.—Granito.—Protests 510400, etc., of Pisani Brothers et al. (New York). Opinion by Hay, G. A.

Protests sustained as to granito. Rossman *v.* United States (1 Ct. Cust. Appls., 280; T. D. 31321) followed.

No. 27017.—Powdered Talc.—Protest 505509 of General Electric Co. (Albany), and protest 511792 of F. A. Reichard (New York). Opinions by Hay, G. A.

Protests sustained as to powdered talc on the authority of Salomon *v.* United States (T. D. 31635).

No. 27018.—Protests Overruled.—Protest 493605 of Robert B. Ways (Baltimore), protest 411646 of Charles B. Chrystal, protests 477935, etc., of A. J. Dale et al., protests 480271, etc., of C. H. King et al., and protests 481546, etc., of Fried, Mendelson & Co. (New York), and protests 297225, etc., of F. Eckerson & Co. et al., and protests 510659, etc., of C. F. Rumpp & Sons (Philadelphia). Opinions by Hay, G. A.

Protests overruled for want of merit.

Before Board 1, November 2, 1911.

No. 27019.—Cut-Paste Articles.—Protests 315668, etc., of J. H. Lichtenstein & Co. et al., and protests 240297, etc., of Zadek Bros. (New York). Opinions by Sharretts, G. A.

Protests sustained as to cut-paste articles on the authority of G. A. 6995 (T. D. 30444) and United States *v.* Beierle (1 Ct. Cust. Appls., 457; T. D. 31506).

No. 27020.—Articles of Personal Adornment—Articles of Utility—Mesh Bags.—Protests 453546, etc., of A. Steinhardt & Bro. (New York). Opinion by Sharretts, G. A.

Protests sustained as to gun-metal mesh bags on the authority of G. A. 7129 (T. D. 31089).

No. 27021.—Vases in Part of Metal—Bottles—Jars—Chemical Glassware.—Protest 234788 of Stix, Baer & Fuller Dry Goods Co. (St. Louis), and protest 292931, etc., of Bausch & Lomb Optical Co. (San Francisco). Opinions by Sharretts, G. A.

Blown-glass vases in part of metal, and glass bottles or flasks, jars, and other articles of blown glass combined with molded glass, classified as blown-glass articles under paragraph 100, tariff act of 1897, were claimed to be dutiable as manufactures of glass (par. 112) and molded or pressed glass bottles or flasks (par. 99). Protests sustained. United States *v.* Heil (178 Fed. Rep., 537; T. D. 30492) and Eimer *v.* United States (126 Fed. Rep., 439; T. D. 25112) followed.

No. 27022.—Protests Overruled.—Protests 515764, etc., of T. D. Downing & Co. et al. (Boston), and protests 9840h, etc., of John Thompson et al. (New York). Opinions by Sharretts, G. A.

Protests overruled for want of merit.

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BEFORE BOARD 2, NOVEMBER 2, 1911.

No. 27023.—CYLINDRICAL METAL CONTAINERS.—Protests 405926, etc., of Edward Hill's Son & Co. et al. (Boston), protests 424542–32223, etc., of M. L. Barrett & Co. et al. (Chicago), protests 505591–3735, etc., of Oberle & Henry et al. (New Orleans), protests 461815, etc., of W. J. Bush & Co. et al. (New York), protests 439659, etc., of J. J. Buchey & Co. (Philadelphia), and protests 411259, etc., of B. R. Anderson & Co. et al. (Port Townsend). Opinions by Fischer, G. A.

Protests sustained as to cylindrical metal containers. United States *v.* Garramone (T. D. 31577), United States *v.* Braun (T. D. 31596), Abstract 26485 (T. D. 31851), and Abstract 26595 (T. D. 31866) followed.

No. 27024.—ROUGH-TRIMMED MICA.—Protests 515195, etc., of Bullock Electric Manufacturing Co. (Cincinnati). Opinion by Fischer, G. A.

Protests sustained as to rough-trimmed mica. United States *v.* Myers (1 Ct. Cust. Appls., 257; T. D. 31301) followed.

No. 27025.—PUBLICATIONS FOR GRATUITOUS CIRCULATION.—Protest 510736 of E. H. Burr (New York). Opinion by Fischer, G. A.

Articles classified as books not specially provided for under paragraph 416, tariff act of 1909, were claimed to be free of duty as publications for gratuitous private circulation (par. 517). Protest sustained. Abstract 24598 (T. D. 31207) followed.

No. 27026.—DRAWPLATES—FORGINGS.—Protest 495352 of George Nash & Co. (New York). Opinion by Fischer, G. A.

Protest sustained as to drawplates on the authority of Abstract 26157 (T. D. 31774).

No. 27027.—PROTESTS OVERRULED.—Protests 373548, etc., of Arthur W. Robson et al. (Baltimore), protests 475160, etc., of J. A. & W. Bird & Co. (Boston), protests 469064–35639, etc., of Bernard, Judae & Co. et al., and protests 507970–37794, etc., of Franklin Co. et al. (Chicago), protest 515209 of M. E. Dey & Co. (Milwaukee), protests 410906, etc., of Hermann Boker & Co. et al. (New York and Pittsburgh), and protests 505456, etc., of Butler Bros. et al. (St. Louis). Opinions by Fischer, G. A.

Protests overruled for want of merit.

No. 27028.—ARTIFICIAL SILK ORNAMENTS, WEBBINGS, AND BELTINGS.—Protest 377907 of C. E. Hertlein, and protests 324197, etc., of A. Steinhardt & Bro. et al. (New York). Opinions by Howell, G. A.

Protests sustained as to ornaments, webbings, and beltings composed of artificial silk. Thomass *v.* United States (1 Ct. Cust. Appls., 86; T. D. 31107) followed.

No. 27029.—PROTESTS OVERRULED.—Protest 487943 of H. B. Claflin Co., and protests 196683, etc., of J. Zimmermann Co. et al. (New York). Opinions by Howell, G. A.

Protests overruled for want of merit.

No. 27030.—SAFETY FUSE.—Protest 479769 of Autolyte Manufacturing Co. (New York). Opinion by Cooper, G. A.

Safety fuse classified as a manufacture of cotton under paragraph 332, tariff act of 1909, was claimed to be dutiable as safety fuse not composed in chief value of cotton (par. 437). Protest sustained.

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No. 27031.—MERCERIZED COTTON.—Protests 482875, etc., of Doull-Miller Co. et al. (New York). Opinion by Cooper, G. A.

The importers' claim that certain cotton cloth was not subject to the additional duty under paragraph 323, tariff act of 1909, for mercerization, was sustained.

No. 27032.—JACQUARD UPHOLSTERY GOODS.—Protests 473248, etc., of Mills & Gibb et al. (New York). Opinion by Cooper, G. A.

Merchandise classified as Jacquard upholstery goods under paragraph 326, tariff act of 1909, was claimed to be dutiable as manufactures of cotton (par. 332). Protests sustained.

No. 27033.—HAT FRAMES.—Protests 415426, etc., of Germain, Hoffbauer & Helm Co. (New York).

Pattern-hat frames classified as partly made wearing apparel under paragraph 324, tariff act of 1909, were claimed to be dutiable as manufactures of cotton (par. 332).

COOPER, *General Appraiser:* * * * There is no dispute as to the facts of this case. The articles are hat frames in chief value of cotton. No briefs have been filed, but the attorney for the importers at the hearing stated that the contention was that paragraph 324 provides only for completed wearing apparel; that the phrase "made up or manufactured, wholly or in part" contained therein does not limit wearing apparel. This provision is a reenactment of paragraph 314, tariff act of 1897, in the interpretation of which paragraph the board has in numerous cases taken a contrary view to that contended for by the protestants in these cases. Note Abstract 20392 (T. D. 29464) as to cotton bibs in the piece; Abstract 20145 (T. D. 29429) as to women's collars in the piece; Abstract 17898 (T. D. 28687) and G. A. 6458 (T. D. 27660) as to sweatbands and hat linings. On the authority of these decisions the protests are overruled and the action of the collector affirmed.

No. 27034.—SCALLOPED NOTTINGHAM LACE CURTAINS.—Protests 432569, etc., of E. Ries & Co. et al. (New York). Opinion by Cooper, G. A.

Lace curtains classified as scalloped articles under paragraph 349, tariff act of 1909, were claimed to be dutiable as curtains made on the Nottingham lace-curtain machine (par. 351). Protests sustained.

No. 27035.—SCALLOPED ARTICLES—DRAWNWORK.—Protests 1489h, etc., of Charles R. Waentig et al. (New York). Opinion by Cooper, G. A.

Protests sustained as to scalloped articles and drawnwork articles on the authority of G. A. 6993 (T. D. 30442) and G. A. 6966 (T. D. 30271).

No. 27036.—FIGURED COTTON CLOTH.—Protests 473188, etc., of M. D. Howell & Co. et al. (New York). Opinion by Cooper, G. A.

The board held that certain cotton cloth was not subject to the additional duty provided in paragraph 323, tariff act of 1909, for such goods when figured. Protests sustained. United States *v.* McConnell (1 Ct. Cust. Appls., 73; T. D. 31104) followed.

No. 27037.—PROTESTS OVERRULED.—Protests 498418, etc., of Jordan-Marsh Co. et al. (Boston), protest 507986-38302 of Mandel Bros. (Chicago), protests 463641, etc., of Abraham & Straus et al., protests 505071, etc., of Kraus, Lambert & Co. et al., protests 471391, etc., of M. Park Parker et al., and protests 95664f, etc., of Thomas Young et al. (New York), and protest 483323 of C. H. Wyman & Co. (St. Louis). Opinions by Cooper, G. A.

Protests overruled for want of merit.

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BEFORE BOARD 3, NOVEMBER 2, 1911.

No. 27038.—HYACINTH BULBS.—Protests 471817, etc., of F. L. Roberts & Co. et al. (Boston). Opinion by Waite, G. A.

Protests sustained as to hyacinth bulbs on the authority of Breck *v.* United States (T. D. 31576).

BEFORE BOARD 1, NOVEMBER 3, 1911.

No. 27039.—LITHOGRAPHIC PRINTS—TOYS.—Protests 348011, etc., of Raphael Tuck & Sons Co. (New York). Opinion by Sharretts, G. A.

Merchandise testified by the examiner to have consisted of paper doll sets, classified as toys under paragraph 418, tariff act of 1897, was found to have consisted of Christmas cards and held dutiable as lithographic prints (par. 400). Protests sustained.

No. 27040.—PROTESTS OVERRULED.—Protest 564808 of Emery-Bird-Thayer Dry Goods Co. (Kansas City), protest 519817 of George Borgfeldt & Co. (Newport News), protests 223420, etc., of Stix, Baer & Fuller Dry Goods Co. et al. (St. Louis), and protests 518135, etc., of F. F. G. Harper & Co. et al. (San Francisco). Opinions by Sharretts, G. A.

Protests overruled for want of merit.

BEFORE BOARD 2, NOVEMBER 3, 1911.

No. 27041.—PROTESTS OVERRULED.—Protests 508367, etc., of Mineral Point Zinc Co. (Milwaukee), and protest 505045 of Knauth, Nachod & Kuhne (New York). Opinions by Fischer, G. A.

Protests overruled for want of merit.

No. 27042.—HORSEHAIR HATS.—Protest 364950 of Gimbel Bros. (Philadelphia). Opinion by Howell, G. A.

Protest sustained as to horsehair hats. United States *v.* Rheims (175 Fed. Rep., 778; T. D. 30226) followed.

No. 27043.—SCALLOPED ARTICLES.—Protest 376468 of Lamb, Finlay & Co. (New York). Opinion by Howell, G. A.

Protest sustained as to scalloped articles on the authority of G. A. 6966 (T. D. 30271).

BEFORE BOARD 3, NOVEMBER 3, 1911.

No. 27044.—CLERICAL ERROR.—Protest 561716 of J. R. Dagnino & Co. (Boston). Opinion by Waite, G. A.

The board sustained a claim for relief on the ground of clerical error, the Treasury Department and the collector having consented to reliquidation.

No. 27045.—"ZABAJONE"—EGGNOG—SPIRITUOUS BEVERAGE.—Protest 479586 of Italo-American Express Co. (New York).

WAITE, *General Appraiser:* The commodity is invoiced in this case as "zabajone," and is described by the appraiser as "a mixture of marsala wine and eggs containing spirits, known as eggnog." It is a rather thick yellow liquid, and is used as a beverage. It has been assessed under paragraph 303, tariff act of 1909, and is

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claimed to be dutiable under paragraph 307. The pertinent portions of the two paragraphs read as follows:

303. Cordials, liqueurs, arrack, absinthe, kirschwasser, ratafia, and other spirituous beverages or bitters of all kinds, containing spirits, and not specially provided for in this section, two dollars and sixty cents per proof gallon.

307. Still wines, including ginger wine or ginger cordial, vermuth, and rice wine or sake, and similar beverages not specially provided for in this section.

An analysis of this commodity shows that it contains absolute alcohol by volume 19.61 per cent, and by weight 87 per cent of cane sugar, 2.60 per cent of albumen, 44.29 per cent of water, and 0.18 per cent of ash, while alcohol by weight is 15.93 per cent.

The claim is made that under paragraph 303 the term "containing spirits" has reference to spirits as such, and that within the meaning of the statute a beverage does not contain spirits if it contains only such alcohol as is derived from the wine used in the preparation of the beverage under consideration. We can not so hold. The provision in paragraph 303 for "beverages or bitters of all kinds containing spirits" is very comprehensive. We think it was intended that the statute should cover alcohol, as such, whether found as a constituent part of some beverage or mixed in its purity to make up a spirituous drink or liquor. Note United States *v.* Shoemaker (84 Fed. Rep., 146). The protest is overruled.

No. 27046.—Hyacinth Bulbs.—Protests 493630–36783, etc., of American Shipping Co. et al., and protest 513246–37995, etc., of International Forwarding Co. (Chicago), protests 444247, etc., of William Elliott & Sons et al. (New York), and protest 491183 of H. Waterer (Philadelphia). Opinions by Waite, G. A.

Protests sustained as to hyacinth bulbs on the authority of Breck *v.* United States (T. D. 31576).

No. 27047.—Ground Pease—Pea Flour.—Protests 498054, etc., of T. Campanella et al. (New York). Opinion by Waite, G. A.

Ground pease classified under paragraph 251, tariff act of 1909, as "pease * * * prepared or preserved" were claimed to be dutiable as an unenumerated manufactured article (par. 480). Protests sustained. Note Abstract 26298 (T. D. 31813).

No. 27048.—Protests Overruled.—Protest 506316 of W. Boyer (El Paso), protests 504862, etc., of L. Balbi & Co. et al. (New York), protests 510619, etc., of R. C. Chance's Sons et al. (Philadelphia), protest 501537 of Stein-Bloch Co. (Rochester), and protests 508456 of Quong Ching Shing & Co. (San Francisco). Opinions by Waite, G. A.

Protests overruled for want of merit.

No. 27049.—Position Babies—Eskimo Dolls.—Protests 511116, etc., of William C. Schoenemann & Son (Philadelphia). Opinion by Hay, G. A.

Protests sustained as to position babies and Eskimo dolls. United States *v.* Butler (180 Fed. Rep., 1005; T. D. 30847) followed.

No. 27050.—Magnesia Articles.—Protests 295459, etc., of Fensterer & Ruhe (New York). Opinion by Hay, G. A.

Magnesia articles classified as earthenware under paragraph 95, tariff act of 1897, were claimed to be dutiable as unenumerated manufactured articles (sec. 6). Protests sustained. Fensterer *v.* United States (1 Ct. Cust. Appls., 93; T. D. 31110) followed.

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No. 27051.—Coverings of Specific-Duty and Free Goods.—Protests 410494, etc., of Henry M. Peyser Co. (Boston), protests 416879, etc., of F. Schmidt et al. (New York), and protests 427266, etc., of Joel Bailey Davis Co. et al. (Philadelphia). Opinions by Hay, G. A.

Paper, cardboard, and pasteboard wrappers or containers of merchandise subject to specific duty or free of duty were held nondutiable, as claimed by the importers. United States *v.* Matagrin (1 Ct. Cust. Appls., 309; T. D. 31406) followed.

No. 27052.—Straw Bottle Covers.—Protest 506069 of Mariani & Co. (New York). Opinion by Hay, G. A.

Straw bottle covers were held free of duty as the usual coverings of merchandise subject to specific duty. G. A. 3836 (T. D. 17961) followed.

No. 27053.—Tam o' Shanter Stones.—Protest 505955 of R. J. Waddell & Co. (New York). Opinion by Hay, G. A.

Tam o' Shanter stones, classified as earthy or mineral substances under paragraph 95, tariff act of 1909, were claimed to be dutiable as unenumerated manufactured articles (par. 480). Protest sustained.

No. 27054.—Powdered Talc.—Protest 513222 of Starkweather & Williams Co. (Boston). Opinion by Hay, G. A.

Protest sustained as to powdered talc on the authority of Salomon *v.* United States (T. D. 31635).

No. 27055.—Protests Overruled.—Protests 434725, etc., of Jones, McDuffee & Stratton Co. et al., and protest 490779 of Simons, Hatch & Whitten Co. (Boston), protest 447616-34664 of Barron Bros. (Chicago), protests 408708, etc., of Reins & Meiss et al. (Cincinnati), protest 560274 of Japan Art & Tea Co. (Houston), protests 523949, etc., of Brooke, Bond & Co. (Minneapolis), protest 509579 of Cortlandt F. Bishop, protests 506012, etc., of Hildreth & Segelken et al., protests 443975, etc., of Reiss & Brady, and protest 509824 of R. G. Von Kokeritz & Co. (New York), and protests 481238, etc., of Philip Halzell et al., and protests 434746, etc., of John Wanamaker et al. (Philadelphia). Opinions by Hay, G. A.

Protests overruled for want of merit.

No. 27056.—Protests Abandoned.—Protests 506235-37300, etc., of American Shipping Co. et al. (Chicago).

Protests abandoned.

Before Board 1, November 6, 1911.

No. 27057.—Cut-Paste Articles—Imitation Precious Stones—Elastic Belts.—Protests 298892, etc., of R. H. Macy & Co., and protests 205704, etc., of Stern Bros. (New York). Opinions by Sharretts, G. A.

Protests sustained as to cut-paste articles, belts in chief value of metal, and imitation precious stones. G. A. 6995 (T. D. 30444), G. A. 7052 (T. D. 30730), and G. A. 5386 (T. D. 24581) followed.

No. 27058.—Toy Jewelry.—Protests 453567, etc., of A. Strauss & Co. et al. (New York). Opinion by Sharretts, G. A.

Protests sustained as to toy necklaces and brooches. G. A. 7251 (T. D. 31786) followed.

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No. 27059.—Protests Overruled.—Protest 274924 of A. W. Chesterton & Co. (Boston), protests 286633–25987, etc., of Downing, Judae & Co. et al. (Chicago), protest 405939 of Benz Auto Importing Co. (New York), and protests 514194, etc., of Rosenthal-Sloan Millinery Co. et al. (St. Louis). Opinions by Sharretts, G. A.

Protests overruled for want of merit.

No. 27060.—Toy Magic-Lantern Slides.—Protest 505486 of J. J. Buchey & Co. (Philadelphia). Opinion by Chamberlain, G. A.

Protests sustained as to toy magic-lantern slides. United States *v.* Borgfeldt (1 Ct. Cust. Appls., 370; T. D. 31455) followed.

No. 27061.—Protests Overruled.—Protest 505513 of Dean Chase Co. (Boston), and protests 513332, etc., of Drevert Manufacturing Co. et al., and protests 433673, etc., of A. A. Vantine & Co. et al. (New York). Opinions by Chamberlain, G. A.

Protests overruled for want of merit.

Before Board 2, November 6, 1911.

No. 27062.—Horsehair Hats.—Protest 358349–28771 of D. B. Fisk & Co. (Chicago). Opinion by Howell, G. A.

Protest sustained as to horsehair hats on the authority of United States *v.* Rheims (175 Fed. Rep., 778; T. D. 30226).

No. 27063.—Artificial Silk Webbings and Beltings.—Protests 300554 and 367027, etc., of A. Steinhardt & Bro. et al. (New York). Opinions by Howell, G. A.

Protests sustained as to artificial silk webbings and beltings. Thomass *v.* United States (1 Ct. Cust. Appls., 86; T. D. 31107) followed.

No. 27064.—Elastic Cords and Belting.—Protest 423680 of B. Blumenthal & Co., and protest 482319 of Mills & Gibb (New York). Opinions by Howell, G. A.

Elastic cords and beltings classified as being in chief value of silk under paragraph 401, tariff act of 1909, were claimed to be dutiable as manufactures in chief value of india rubber (par. 463). Protests sustained. Note Abstract 25606 (T. D. 31616).

No. 27065.—Malines Nets.—Protest 509625 of Louis Hamburger & Co. (New York). Opinion by Howell, G. A.

Protest sustained as to Malines nets. Abstract 24701 (T. D. 31255) followed.

No. 27066.—Protests Overruled.—Protest 447839 of Gerber, Nott & Co. (Boston), protests 513227–38016, etc., of American Shipping Co. et al., and protest 495902–36858 of Marshall Field & Co. (Chicago), protest 508106 of A. T. Lewis & Son Dry Goods Co. (Denver), protests 462248, etc., of J. Donat & Co., protest 379952 of Graf Bros., protest 475335 of E. de Grandmont, and protests 474173, etc., of J. E. Wunsch & Co. (New York), protest 488236 of F. B. Vandegrift & Co., (Philadelphia), protest 509962 of Rosenthal-Sloan Millinery Co. (St. Louis), and protest 472753 of D. Lowenstein (San Francisco). Opinions by Howell, G. A.

Protests overruled for want of merit.

No. 27067.—Protests Overruled.—Protest 490773 of Arthur W. Robson (Baltimore). Opinion by Cooper, G. A.

Protest overruled for want of merit.

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BEFORE BOARD 3, NOVEMBER 6, 1911.

No. 27068.—COVERINGS OF SPECIFIC DUTY AND FREE GOODS.—Protests 480686, etc., of Marshall Field & Co. (New York). Opinion by Hay, G. A.

Paper, cardboard, and pasteboard wrappers or containers of merchandise subject to specific duty or free of duty were held nondutiable, as claimed by the importers. United States *v.* Matagrin (1 Ct. Cust. Appls., 309; T. D. 31406) followed.

No. 27069.—PROTESTS OVERRULED.—Protests 395598, etc., of Sinclair, Rooney & Co. (Buffalo), and protests 430550-32070, etc., of Marshall Field & Co. et al. (Chicago). Opinions by Hay, G. A.

Protests overruled for want of merit.

Decisions on Applications for Rehearings.

No. 27070.—REHEARING GRANTED—COVERINGS.—Application by the protestants for rehearing on protests 421956, etc. (New York), of Pitt & Scott et al., decided August 12, 1911, Abstract 26335 (T. D. 31813). No. 338. Before Board 3, October 17, 1911.

Application granted. Certain articles are claimed to be usual coverings and therefore either free of duty or dutiable at the rate applicable to their contents.

No. 27071.—REHEARING GRANTED—FLAX FABRICS.—Application by the protestants for rehearing on protest 451272 (New York) of Henry Glass & Co., decided September 14, 1911, Abstract 26604 (T. D. 31866). No. 359. Before Board 2, October 17, 1911.

Application granted. Flax fabrics classified as weighing less than 4½ ounces per square yard and counting more than 100 threads per square inch under paragraph 357, tariff act of 1909, are claimed to be dutiable under the provision in the same paragraph for fabrics weighing less than 4½ ounces per square yard and not exceeding 100 threads per square inch.

No. 27072.—REHEARING GRANTED—ARTISTIC ANTIQUITIES—TABLE.—Application by the Government for rehearing on protest 438133 (Boston) of Dudley L. Pickman, decided September 21, 1911, Abstract 26681 (T. D. 31883). No. 366. Before Board 3, October 17, 1911.

Application granted. The Government claims that the board erred in holding a certain table free of duty under paragraph 717, tariff act of 1909, as artistic antiquities.

No. 27073.—REHEARING DENIED.—Application by the protestants for rehearing on protest 500800-37599 (Chicago) of G. W. Sheldon & Co., decided September 21, 1911, Abstract 26684 (T. D. 31883). No. 370. Before Board 3, October 17, 1911.

Application denied.

No. 27074.—REHEARING DENIED.—Application by the protestants for rehearing on protests 480771, etc. (New York), of Interstate Chemical Co., decided September 7, 1911, Abstract 26488 (T. D. 31851). No. 367. Before Board 2, October 21, 1911.

Application denied.

No. 27075.—REHEARING DENIED.—Application by the protestants for rehearing on protest 472734 (Port Townsend) of Thomson & Stacey, decided September 7, 1911, Abstract 26487 (T. D. 31851). No. 368. Before Board 2, October 21, 1911.

Application denied.

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No. 27076.—REHEARING DENIED.—Application by the protestants for rehearing on protest 199157-21117 (Chicago) of Marshall Field & Co., decided September 14, 1911, Abstract 26601 (T. D. 31866). No. 371. Before Board 2, October 21, 1911.

Application denied.

(T. D. 31988.)

Disposition of fines collected for violation of the act of June 9, 1910, to regulate motor-boat equipment.

[Circular No. 65.]

TREASURY DEPARTMENT, *November 1, 1911.*

To United States attorneys, clerks of courts, marshals, and collectors and surveyors of customs:

All public moneys received which have accrued to the United States from fines or penalties imposed by the courts for violation of the act of Congress approved June 9, 1910, to regulate the equipment of motor boats, should be paid to the clerk of the court and by him turned over to the collector or surveyor of customs in the district or port in which the case arose.

These instructions are supplemental to department circular regulations for the deposit of public moneys No. 47, dated April 5, 1905.

FRANKLIN MACVEAGH, *Secretary.*

(T. D. 31989.)

Drawback on wire.

Drawback on wire manufactured by the Electrical Alloy Co., of Morristown, N. J., with the use of imported nickel-steel rods and copper rods.

TREASURY DEPARTMENT, *November 7, 1911.*

SIR: Drawback is hereby allowed under section 25 of the tariff act of August 5, 1909, and the regulations promulgated thereunder (T. D. 31695 of June 16, 1911), on wire manufactured by the Electrical Alloy Co., of Morristown, N. J., from imported nickel-steel rods and copper rods.

The allowance may equal the net weight of the finished product. When the wire is wound upon spools or reels, the weight of such reels or spools shall be shown.

Sworn supplemental statements covering other kinds of wire may be filed and after verification drawback allowed under this decision.

The manufacturers' sworn statement, dated October 16, 1911, is inclosed herewith for filing in your office.

Respectfully, JAMES F. CURTIS,
(91377.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 31990.)

Cotton cloth with mercerized selvages.

Appeal directed from the decision of the Board of United States General Appraisers of September 18, 1911, Abstract 26639 (T. D. 31883), involving the classification of cotton cloth with mercerized selvages.

TREASURY DEPARTMENT, *November 8, 1911.*

SIR: The department is in receipt of your letter of the 2d instant, relative to the decision of the Board of United States General Appraisers of September 18, 1911, Abstract 26639 (T. D. 31883), wherein it is held that certain cotton dress goods, the selvages of which were mercerized, were not subject to the additional duty of 1 cent per square yard provided in paragraph 323 of the tariff act of 1909 for mercerized cotton cloth.

In view of the importance of the issue, you are hereby requested to file, in the name of the Secretary of the Treasury, an application with the United States Court of Customs Appeals for a review of the said decision, in accordance with the provisions of subsection 29 of section 28 of the said tariff act.

Respectfully, JAMES F. CURTIS,
(92024.) *Assistant Secretary.*

Hon. WM. L. WEMPLE,
Assistant Attorney General, New York.

(T. D. 31991.)

Drawback on witch-hazel.

Drawback on witch-hazel manufactured by E. A. & W. E. Child, of East Hampton, Conn., with the use of domestic tax-paid alcohol.

TREASURY DEPARTMENT, *November 6, 1911.*

SIR: Drawback is hereby allowed under section 25 of the tariff act of August 5, 1909, and the regulations promulgated thereunder (T. D. 31695 of June 16, 1911), on witch-hazel manufactured by E. A. & W. E. Child, of East Hampton, Conn., with the use of domestic tax-paid alcohol.

The quantity of alcohol which may be allowed may equal the quantity used, provided it shall not exceed 17 per cent of the exported article, this percentage being based upon absolute alcohol.

The manufacturers' sworn statement, dated October 30, 1911, is inclosed herewith for filing in your office.

Respectfully, JAMES F. CURTIS,
(91365) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Boston, Mass.*

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(T. D. 31992.)

Drawback on forgings.

Drawback on forgings consisting of rivets, guide bars, and cylinder studs manufactured by the Baldwin Locomotive Works, of Philadelphia, Pa., from imported bars.

TREASURY DEPARTMENT, *November 7, 1911.*

SIR: Drawback is hereby allowed under section 25 of the tariff act of August 5, 1909, and the regulations promulgated thereunder (T. D. 31695 of June 16, 1911), on forgings consisting of rivets, guide bars, and cylinder studs manufactured by the Baldwin Locomotive Works, of Philadelphia, Pa., from imported bars.

A manufacturing record shall be kept showing the weight of the imported material, the weight of the finished articles, the wastage and the values of the waste, and the imported material at the factory. A sworn abstract from this record shall be filed with each entry.

The allowance shall be based upon the net weight of the finished articles, with an addition thereto to compensate for worthless waste not to exceed that shown in the sworn abstract.

The manufacturers' sworn statement, dated July 1, 1911, is transmitted herewith for filing in your office.

Respectfully, JAMES F. CURTIS,
(20030.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Philadelphia, Pa.*

(T. D. 31993.)

Drawback on perfumery essences.

Drawback on perfumery essences manufactured by George Lueders & Co., of New York, in part from domestic tax-paid alcohol.

TREASURY DEPARTMENT, *November 8, 1911.*

SIR: Drawback is hereby allowed under section 25 of the tariff act of August 5, 1909, and the regulations promulgated thereunder (T. D. 31695 of June 16, 1911), on perfumery essences manufactured by George Lueders & Co., of New York, in part from domestic tax-paid alcohol.

The allowance shall not exceed the percentages set forth in the sworn statement and schedule, dated August 21, 1911, transmitted herewith for filing in your office.

Respectfully, JAMES F. CURTIS,
(92068.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 31994.)

Export bounty on fish the product of French fisheries.

Additional duty under section 6, tariff act of 1909, equivalent to the export bounty paid, to be collected on certain fish, the product of the French fisheries.

TREASURY DEPARTMENT, *November 9, 1911.*

To collectors and other officers of the customs:

The department is in receipt, by reference from the Secretary of State, of a dispatch from the American consul at St. Pierre, transmitting a translation of a part of Clause II of the French law of February 26, 1911, which provides for bounties in connection with the deep-sea fisheries as follows:

1. Twenty francs (20 francs) the metric quintal (220.46 pounds avoirdupois) for dried codfish shipped either directly from the place of fishery or from bonded warehouses in France to foreign countries or to French colonies outside the limits of international coasting trade.

2. Sixteen francs (16 francs) the metric quintal on dried codfish shipped from ports in France, without having been warehoused, and imported into the French colonies, Algeria excepted, or into foreign countries outside the limits of international coasting trade.

3. Sixteen francs (16 francs) the metric quintal on dried codfish shipped either directly from the place of fishery or from ports in France to foreign countries within the limits of international coasting trade.

4. Twelve francs (12 francs) the metric quintal on fish caught on the west coast of Africa and dried under conditions analogous to those of codfish, shipped either directly from the place of fishery or from ports in France to foreign countries or French colonies, except Algeria, Senegal, and Mauritania.

Provided always, That codfish, as well as fish from the western coast of Africa, shipped either directly from the place of fishery or from ports or warehouses in France to the French colonies shall receive the total of the bounties provided for in this paragraph only on shipments to those colonies where the customs duties on such fish are equal to or less than 10 francs the metric quintal.

On shipments to colonies in which the said customs duties are above 10 francs the metric quintal the bounties shall be reduced at the rate of 1 franc for each franc customs duty above 10 francs.

Except that a minimum bounty of four francs (4 francs) the metric quintal shall be allowed on shipments of codfish dried at St. Pierre and Miquelon and imported into the French colonies, even in cases where the application of the provisions above set forth would have the effect of reducing the bounty below this figure.

Additional duties as provided in section 6 of the tariff act of August 5, 1909, should be collected accordingly.

Commenting on this new law, the consul states—

1. That the law took effect on July 1, 1911.

2. That the term, "the limits of international coasting trade," quoted above, is defined by the French merchant marine act of 1893 to be voyages made by French vessels between ports in France (including Algeria) and for imports, as well as between foreign ports, within the following limits:

On the north, by latitude 72° north; on the south, by latitude 30° north; on the east, by longitude 44° east of the meridian of Paris; on the west, by longitude 15° west of the meridian of Paris.

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3. That the bounty to be allowed on codfish exported from St. Pierre to the United States remains the same as under the old law (T. D. 30220), namely, 20 francs per metric quintal.

4. That it will be observed that bounties are allowed on certain fish other than cod taken on the west coast of Africa.

5. That no change has been made under this new law in the practice of classifying haddock as codfish for bounty purposes. (T. D. 30371.)

The department has this day requested the Secretary of State to advise the consular officers concerned of the foregoing, and to instruct them to note on every invoice of the fish covered by the above-quoted extract from the French law—

1. The bounty paid.
2. The place of origin of the fish.
3. The place to which they were exported from such place of origin.
4. If exported to any French colony under the conditions set forth in the provisions of the French law quoted above, to note also what the customs duties are on such fish in the colony to which so exported.

JAMES F. CURTIS, *Assistant Secretary.*

(T. D. 31995.)

Drawback on gramophone cabinets.

Drawback on gramophone cabinets manufactured by the Henry H. Sheip Manufacturing Co., of Philadelphia, Pa., with the use of imported hardware.

TREASURY DEPARTMENT, *November 7, 1911.*

SIR: Drawback is hereby allowed under section 25 of the tariff act of August 5, 1909, and the regulations promulgated thereunder (T. D. 31695 of June 16, 1911), on gramophone cabinets manufactured by the Henry H. Sheip Manufacturing Co.. of Philadelphia, Pa., with the use of imported hardware.

The allowance shall not exceed the quantity of hardware used as specified in the manufacturers' sworn statement, dated October 9, 1911, transmitted herewith for filing in your office.

Respectfully, JAMES F. CURTIS,
(91385.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Philadelphia, Pa.*

(T. D. 31996.)

Drawback on automobile tires.

Drawback on automobile tires manufactured by the B. F. Goodrich Co., of Akron, Ohio, with the use of imported leather butts and metal rivets or studs.—T. D. 30197 of December 14, 1909, and T. D. 31486 of April 12, 1911, revoked.

TREASURY DEPARTMENT, *November 8, 1911.*

SIR: Drawback is hereby allowed under section 25 of the tariff act of August 5, 1909, and the regulations promulgated thereunder (T. D.

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31695 of June 16, 1911), on automobile tires manufactured by the B. F. Goodrich Co., of Akron, Ohio, with the use of imported leather butts and metal rivets or studs.

In liquidation, the quantities of imported leather butts and rivets which may be taken as the basis for the allowance of drawback may equal the quantities used as declared in the drawback entry, provided they shall not exceed the quantities set forth in the manufacturer's sworn statement, dated October 4, 1911, transmitted herewith for filing in your office, with an addition in the case of leather butts not to exceed 66⅔ per cent of the leather contained in the exported product to compensate for worthless waste.

T. D. 30197 of December 14, 1909, and T. D. 31486 of April 12, 1911, are hereby revoked.

The sworn statement referred to covers tires manufactured since August 1, 1911.

Respectfully, JAMES F. CURTIS,
(69713.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 31997.)

Drawback on portraits.

Drawback on portraits manufactured by the Pioneer Portrait & Picture Frame Co., of Chicago, Ill., with the use of imported Steinbach paper.

TREASURY DEPARTMENT, *November 9, 1911.*

SIR: Drawback is hereby allowed, under section 25 of the tariff act of August 5, 1909, and the regulations promulgated thereunder (T. D. 31695 of June 16, 1911), on portraits manufactured by the Pioneer Portrait & Picture Frame Co., of Chicago, Ill., with the use of imported Steinbach paper, in accordance with the sworn statement, dated October 9, 1911, transmitted herewith for filing in your office.

In estimating the drawback, the following weights for 100 sheets of the sizes given shall be taken, with an addition of 2 per cent to compensate for loss in cutting the paper to sizes: 8 by 10 inches, 1.05 pounds; 16 by 20 inches, 4.23 pounds; 18 by 22 inches, 5.22 pounds; 20 by 24 inches, 5.64 pounds; 22 by 27 inches, 7.85 pounds; 25 by 30 inches, 9.91 pounds.

Respectfully, JAMES F. CURTIS,
(91339.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *Chicago, Ill.*

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(T. D. 31998.)

Drawback on pulled and graded wool.

Drawback on graded pulled wool manufactured by the New England Dressed Meat & Wool Co., of Somerville, Mass., for and on account of the Swift Wool Co., from imported sheepskins.

TREASURY DEPARTMENT, *November 9, 1911.*

SIR: The department's regulations of May 21, 1907 (T. D. 28169), providing for the allowance of drawback on graded pulled wool manufactured by Windsor Bros. & Smith Co., of Norwood, Mass., from imported sheepskins, are hereby extended so far as applicable to cover the exportation of pulled and graded wool manufactured by the New England Dressed Meat & Wool Co., of Somerville, Mass., for and on account of the Swift Wool Co., from imported sheepskins.

The sworn statements of the New England Dressed Meat & Wool Co., dated September 1, 1911, and of the Swift Wool Co., dated September 8, 1911, are inclosed herewith for filing in your office.

Respectfully, JAMES F. CURTIS,
(88530.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Boston, Mass.*

(T. D. 31999.)

Merchandise imported under special bonds.

Regulations governing the entry of certain classes of merchandise under bond conditioned for the exportation of the goods within specified periods or for the payment of the duties if the goods enter into the commerce of the United States or are applied to uses other than those prescribed by the law under which they are imported.

TREASURY DEPARTMENT, *November 11, 1911.*

To collectors and other officers of the customs:

The department's attention is invited by the Auditor for the Treasury Department to differences in the practice at the various ports in relation to the entry of articles under the various provisions of the tariff laws and the customs regulations for the free entry of articles under bond for exportation.

(1) In order that the practice in such regard may be made uniform, and that articles so entered may be duly accounted for and their exportation assured within the time provided by law, the following regulations are hereby promulgated to govern the entry and exportation of all articles imported under the provisions of section 3021 of the Revised Statutes, section 18 of the tariff act of August 5, 1909,

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and of paragraphs 493, 656, and 714 of section 1 of the said act, and articles 595 and 596 of the Customs Regulations of 1908.

The following articles of the Customs Regulations of 1908 are hereby amended to read as follows:

"ARTICLE 595. Automobiles, motor cycles, bicycles, vehicles and teams and saddle horses, including harness, saddles, and accessories, of foreign origin imported into this country by the owners personally for bona fide touring purposes only, provided such owners are nonresidents of the United States, are entitled to free entry under bond for a stay of six months; provided, however, that such owner shall present at the time of making entry a certificate from the United States consul at the port of exportation, based upon the sworn statement of the owner, to the effect that the said article is brought to this country for touring purposes only and that the same is not to be used for any commercial purposes or business pursuits whatsoever while in the United States. The articles enumerated herein may accompany the owner or arrive within 30 days before or after his arrival.

"ARTICLE 596. Automobiles, motor cycles, bicycles, aeroplanes, airships, balloons, motor boats, racing shells, and similar vehicles and craft brought into this country by nonresidents of the United States for the purpose of racing or taking part in other specific contests are entitled to free entry under bond for a stay of not exceeding six months, but can not be admitted hereunder for display in shows or exhibitions of any kind, nor for any commercial or trade purposes whatsoever. Such purpose shall be evidenced by the oath of the owner or his agent made before the United States consul at the port of exportation and by him certified, and presented at the time of entry.

"ARTICLES 640 to 647. Machinery for repair may be entered free of duty under bond, conditioned for its exportation within six months, under the provisions of section 18 of the tariff act of August 5, 1909, upon the filing of an affidavit on Form Catalogue No. 3329. Railroad iron, partially or wholly worn, may also be entered free of duty for repair or remanufacture, under bond conditioned for the exportation thereof within six months, under the provisions of section 3021 of the Revised Statutes, upon the filing of an affidavit on Form Catalogue No. 3329, modified to suit the facts.

"ARTICLES 661 to 668. Animals brought into the United States temporarily for a period not exceeding six months for the purpose of breeding, exhibition, or competition for prizes offered by an agricultural, polo, or racing association will be admitted without payment of duty under paragraph 493 of the tariff act of August 5, 1909, under bond conditioned upon the exportation of the animals within six months after the date of importation.

"It must be shown to the satisfaction of the collector at the port of importation that the animals are imported for the purposes mentioned

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in the law, and, if imported for exhibition or competition, that the association is one open generally to the public. Animals imported for training for a subsequent racing exhibition are within he law. Animals for breeding purposes may be brought in by individuals. The consular invoice will describe the animals and set forth the value thereof. This provision will include sulkies, carts, and other vehicles, equipment, and harness, etc.

"In the case of death of animals imported for the said purposes while in the United States under bond, through accident or other casualty, and in the case of articles imported hereunder which shall be totally destroyed by fire, accident, or other casualty while in this country under bond, application for the cancellation of the bonds covering the same may be made to the department. Such application should be accompanied by affidavit of the importer, and others having knowledge of the fact, setting out the circumstances of the death of the animals or the destruction of the articles.

"ARTICLES 677 to 678. Theatrical scenery, properties, and apparel brought by proprietors or managers of theatrical exhibitions arriving from abroad for temporary use by them in such exhibitions and not for any other person, nor for sale, and which have been used by them abroad, shall be admitted free of duty under bond for a stay of six months, under the provisions of paragraph 656 of the tariff act of August 5, 1909, upon the filing of an affidavit on Form Catalogue No. 3325. Trained or performing animals imported for use or exhibition in theaters or menageries come within this provision.

"ARTICLE 715. Works of art, drawings, engravings, photographic pictures, and philosophical and scientific apparatus brought into the United States by professional artists, lecturers, or scientists arriving from abroad for use by them temporarily for exhibition and in illustration, promotion, and encouragement of art, science, or industry in the United States, and not for sale, may be admitted free of duty under bond for a stay of six months, under the provisions of paragraph 714 of the tariff act of August 5, 1909, upon the filing of an affidavit on Form Catalogue No. 3333, showing that the importer is a professional artist, lecturer, or scientist arriving from abroad, and that such articles are not intended for sale and are brought into the United States by him for the purposes mentioned."

(2) Entry of such merchandise should be required to be made on a form similar to that set forth in article 217 of the Customs Regulations of 1908, modified by striking out the word "consumption" in the title and inserting after the word "entry" the words "under six months' bond." A sufficient description of articles so entered should be required to be included in the entry to permit the same to be identified upon exportation being made.

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(3) The bond required upon the entry of such articles should be taken on Catalogue No. 3775, which will be amended to read as follows:

Cat. No. 3775. Bond No. ——.
Arts. 641-647, 677-715, C. R. 1908.

SPECIAL SIX MONTHS' BOND FOR EXPORTATION.

This bond to be used upon the entry of articles that are to be exported within six months, under section 3021, Revised Statutes, section 18 of the tariff act of August 5, 1909, and paragraphs 493, 656, and 714 of section 1 of the said act, and articles 595 and 596 of the Customs Regulations of 1908.

Know all men by these presents, That —— ——, of ——, as principal, and —— ——, of ——, and —— ——, of ——, as sureties, are held and firmly bound unto the United States of America in the sum of —— dollars, for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

Witness our hands and seals this —— day of ——, 191—.

Whereas the above-bounden principal imported at the port of —— on the —— day of ——, per S. S. ——, for the purpose of ——, in accordance with the provisions of[1] ——, certain goods, wares, and merchandise covered by entry No. —— and described as follows ——:

Now, therefore, the condition of this obligation is such that if the aforesaid merchandise shall be actually exported within six months after the date of its importation and shall not, or any part thereof, be relanded at any port or place within the limits of the United States, and if the certificates and other proofs required by law and the customs regulations showing the delivery of the same at a foreign port or place shall be produced and deposited with the collector of customs at the said port of importation within one year from the date hereof, or, in default thereof, if the obligors shall pay the duties which may be assessed upon the said goods, wares, or merchandise, then this obligation shall be void; otherwise it shall remain in full force and effect.

—— ——. [SEAL.]
—— ——. [SEAL.]
—— ——. [SEAL.]

Signed, sealed, and delivered in presence of—

—— ——.
—— ——.

A supply of such forms will be furnished upon requisition therefor being made. The forms of Catalogues 3775 and 3779 now on hand may, however, be used until the supply thereof is exhausted, although the method of accounting for merchandise so entered herein provided for should be immediately adopted.

(4) The penalty of such bonds, when given under the provisions of paragraph 493, 656, or 714 of the tariff act, or under section 3021 of the Revised Statutes, or article 595 or 596 of the Customs Regulations of 1908, shall be in a sum equal to double the estimated duty.

(5) The penalty of such bonds given upon the entry of machinery for repair under the provisions of section 18 of the tariff act, how-

[1] Insert section of paragraph of law or article of Customs Regulations under which entry is made.

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ever, will be in a sum equal to double the appraised value of the merchandise, as is expressly provided in said section.

(6) A separate record of such entries will be kept and collectors of customs will no longer account for the duties thereon in their abstracts of merchandise entered for warehouse, but a separate abstract thereof will be forwarded to the Auditor for the Treasury Department each month on the following form:

CAT. No. 3673.

ABSTRACT OF DUTIES ON MERCHANDISE ENTERED UNDER BOND FOR EXPORTATION IN THE DISTRICT OF ——— FOR THE MONTH OF ———, 191—.

Date of importation.	Entry No.	Bond No.	Par. No.	Merchandise.	Quantity.	Value.	Rate of duty.	Duties.

(7) Merchandise so entered may be exported either at the port of entry or at another port, except railroad iron for repair or remanufacture and machinery for repair, which must be exported at the same port at which imported. Before exportation is made the importer should file an application for the examination of the merchandise for exportation substantially in the following form:

PORT OF ———,
———, *191*—.

Collector of customs.

SIR: Application is hereby made for the exportation [1] per steamship ———, sailing on the —— day of ———, 191—, of the merchandise described in the copy of the invoice hereto attached, the property of ———, which arrived in this country ex steamship ——— from ———, and for which special bond No. ——, maturing on the ——— day of ———, 191—, was given at ———. The merchandise may be examined for identification at ——— on or after the ——— day of ———, 191—.

——— ———.

UNITED STATES CUSTOMS SERVICE,
PORT OF ———,
OFFICE OF THE COLLECTOR,
———, 191—.

The Appraiser:

Please detail an officer to examine for identification, previous to export, the merchandise described in the accompanying invoice, the property of ——— ———, imported per steamship ———, on the —— day of ———, 191—, entry No. ——, for which special bond No. —— was given at this port.

The merchandise may be examined as indicated in the within application.

——— ———,
Deputy Collector.

Invoice No. —— inclosed.

[1] If by rail, change form accordingly.

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The Surveyor:

Please detail an officer to proceed to ——— to supervise the packing and transfer to the steamship ——— for export to ——— the merchandise hereinbelow described, the property of ——— ———, which arrived in this country ex steamship ——— from ——— and for which Special Bond No. —— was given at this port.

(Description of merchandise.)

——— ———,
Deputy Collector.

PORT OF ———,
———, *191—.*

I, ——— ———, have examined the goods described within, and finding them to agree therewith, they were laden under my supervision on board the ——— for ———.

——— ———,
Inspector.

At ports at which there are no appraiser and surveyor the direction to examine for identification and supervise the lading for exportation should be made to an inspector.

(8) If exportation should be made at any port other than that at which the merchandise was imported, except railroad iron for repair or remanufacture and machinery for repair, which must be exported at the same port at which imported, a certified copy of the import entry or the invoice used upon entry should be filed with such application, but the same may be waived by the collector of customs if a sufficiently detailed description of the articles exported is given in the application to enable the same to be identified with the articles covered by the import entry, and in case of articles exported at another port than the port of entry the collector of customs at such port of exportation will forward to the collector at the port of importation a copy of said application, with the appraiser's and inspector's return indorsed thereon, and the bond given upon entry will be canceled upon such certificate of lading and the production of a landing certificate by the foreign consignee before an American consular officer, or of a certificate from the customs officer at the foreign port to which the merchandise was exported showing the entry thereof to have been made at that port. If it should appear, however, that any part of the merchandise covered by the import entry was not exported, the collector of customs will require the payment of duty thereon before canceling the bond given upon entry.

Bonds taken under these regulations in the sum of $100 or less may be canceled upon the production of satisfactory evidence of exportation of the merchandise without filing a foreign landing certificate.

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(9) Each month an abstract will be forwarded to the Auditor for the Treasury Department of bonds so canceled on the following form:

ABSTRACT OF SPECIAL BONDS CANCELED.

Cat. No. 3675.

PORT OF ——,
——, 191—.

Date of importation.	Date of exportation.	Entry No.	Bond No.	Merchandise.	Duty.	Remarks.

(10) Bonds given on the entry of theatrical effects under the provisions of paragraph 656, or of works of art, scientific apparatus, etc., under the provisions of paragraph 714 of the existing tariff act may be extended for a further period of six months upon application to the department therefor being made. Bonds given upon the entry of articles under the provisions of the tariff laws or customs regulations above cited, other than said paragraphs 656 and 714, can not, however, be extended.

JAMES F. CURTIS, *Assistant Secretary.*

(T. D. 32000.)

Silk noils.

T. D. 31824 of August 18, 1911, relative to the classification of silk noils, not to become effective until December 16, 1911.

TREASURY DEPARTMENT, *November 11, 1911.*

SIR: Referring to the department's letter of August 18, 1911 (T. D. 31824), directing that 30 days from the date thereof silk noils, whether combed or uncombed, should be assessed with duty at the rate of 35 cents per pound under paragraph 396 of the tariff act, and its letter of September 16, 1911 (T. D. 31855), extending the period to 90 days from August 18, 1911, I have to advise you that the proper classification of this merchandise is being made the subject of a careful investigation, and pending the result thereof a further extension of 30 days is hereby given, and, therefore, the department's instructions under date of August 18, 1911 (T. D. 31824), are not to control in the classification of this merchandise until December 16, 1911.

Respectfully,
(84034.)

JAMES F. CURTIS,
Assistant Secretary.

COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 32001.)

Ports.

Kalama, Wash., constituted subport of entry in the district of Puget Sound.

TREASURY DEPARTMENT, *November 9, 1911.*

SIR: In view of the authority contained in the act of Congress of August 28, 1890, and as recommended in your letter of July 14 last, Kalama, in the State of Washington, is hereby constituted a subport of entry in the district of Puget Sound, and you are hereby authorized to station a deputy collector and inspector of customs at that place, with compensation at the rate of $50 per annum, with authority to enter and clear vessels and perform such other service as the interests of commerce may require.

You will submit a nomination for appointment to this position for specific approval by the department. * * *

Respectfully, JAMES F. CURTIS,
(90036.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Port Townsend, Wash.*

(T. D. 32002—G. A. 7295.)

Schappe silk yarns.

Schappe silk yarns, dyed and finished, are dutiable under paragraph 397, tariff act of 1909, according to the number of the yarns in their dyed condition as found by the metric or French system.—G. A. 7045 (T. D. 30723) modified.

United States General Appraisers, New York, November 13, 1911.

In the matter of protests 407961, etc., of The Salt's Textile Manufacturing Co. against the assessment of duty by the collector of customs at the port of Bridgeport.

Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers).

HOWELL, *General Appraiser:* The goods in question consist of schappe silk yarns, which, it is conceded, are dutiable under paragraph 397, tariff act of 1909. Said paragraph 397 provides rates of duty for such yarns, which rates are regulated by the condition, the value, and the number of the yarn; and the paragraph further provides that—

In assessing duty on all spun silk or schappe silk yarn, the number indicating the size of the yarn shall be taken according to the metric or French system, and shall, in all cases, refer to the size of the singles.

The yarns in the case at bar are imported in a dyed condition, and the only question at issue is the number which should be given them in this condition according to the metric or French system.

In a similar case involving protests of the same importers, decided in G. A. 7045 (T. D. 30723), we held that the word "number" as used

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in paragraph 397 means the number of the yarn in the gray or original condition before being dyed, which number is, in the trade, preserved and adheres to the yarn in the condition in which it is imported. In that case the testimony was very meager, only one trade witness having been called. The Government did not offer any evidence, and as the testimony of the witness produced by the importers not only did not support their contention, but, on the contrary, tended to confirm the accuracy of the method followed by the collector in ascertaining the number of the yarn, we were of the opinion that the collector's decision should be affirmed.

In this case the record is more complete, and, as in the former case, all the testimony was offered by the importers. The importers contend here, as they did in the former case, that the number of the yarn in the dyed condition must be ascertained according to the metric or French system without reference to what the number of the yarn was in its gray condition.

The rule to be followed in finding the number of schappe silk yarn in the gray condition was stated in our decision in Bouchsein's case, G. A. 7046 (T. D. 30724) and G. A. 7147 (T. D. 31181), which was affirmed by the Court of Customs Appeals in United States *v.* Bouchsein (T. D. 31954).

The testimony in this case, however, indicates that the same rule can not be applied to the dyed yarns. A yarn which has been dyed and "weighted" (that is, has had foreign matter added in the process of dyeing) will not weigh the same as the yarn did in its gray state, and as the weight of the yarn is one of the prime factors involved in the problem of finding its number according to the metric or French system, it follows that because of the variation in weight the number of the dyed yarn will be different from its number in the gray. The weight of the yarn is also affected by the removal of natural gum in the process of dyeing, and the testimony shows that the loss in weight on this account can not be accurately determined after the silk has been dyed. This loss can only be approximately determined by a knowledge of the weight of the silk in the gray and the amount it is "weighted" in dyeing, facts which are known to the dyer and spinner only.

The uncontradicted testimony is to the effect that it is not practicable to accurately ascertain after a yarn has been dyed what its number was in the gray state, and that the term "number," when applied to dyed schappe silk yarns means in trade and commerce the weight expressed in kilograms of a measured length of yarn in the dyed condition, and not the weight of a like length of yarn in its gray state. There appears to be no established rule for conditioning these yarns such as obtains with respect to the gray yarns. The testimony shows that it is the general custom of the trade to buy the yarns of the spin-

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ner in the gray condition, each purchaser then turning the yarn over to the dyer to be weighted and dyed according to specifications furnished by him to suit his particular requirements. This being the almost universal custom of the trade, as the testimony shows, no necessity has been recognized for establishing a rule for conditioning the dyed yarns, and it would appear that if the yarns are purchased in a dyed condition, and the number is to be found according to the metric or French system, a certain length of yarn is weighed, and this weight in kilograms is divided into the length in meters of the piece so weighed, and the quotient is the number of the yarn.

This being the only method known to the trade for finding the number of the dyed yarn, we think it must be followed in ascertaining the number for dutiable purposes, and we so hold.

The protests making that claim are sustained, and G. A. 7045 (T. D. 30723) is modified accordingly.

(T. D. 32003—G. A. 7296.)

Beaded bags in chief value of silk.

Ladies' hand bags composed of silk and ornamented with glass beads, silk being the component material of chief value, in accordance with the proviso to paragraph 402, tariff act of 1909, "that articles composed wholly or in chief value of any of the materials or goods dutiable under this paragraph shall pay not less than the rate of duty imposed upon such materials or goods by this section," are dutiable at 60 per cent ad valorem, the rate provided for "silk goods ornamented with beads or spangles" in said paragraph 402.

Ladies' hand bags composed of glass beads, cotton, and metal, glass beads chief value, are dutiable as beaded articles under paragraph 421, act of 1909.

United States General Appraisers, New York, November 13, 1911.

In the matter of protest 448800 of Knauth, Nachod & Kuhne against the assessment of duty by the collector of customs at the port of New York.

Before Board 1 (SHARRETTS, McCLELLAND, and CHAMBERLAIN, General Appraisers; McCLELLAND, G. A., absent),

SHARRETTS, *General Appraiser:* The appraiser reports:

The merchandise marked "B" consists of ladies' hand bags, composed of silk and ornamented with glass beads, silk being the component material of chief value. Return for duty was made as bead silk articles at 60 per cent under paragraph 402.

The merchandise marked "C" consists of ladies' hand bags, composed of glass beads, cotton, and metal, glass beads chief value. Return for duty was made as bead articles at 60 per cent under paragraph 421, act of 1909.

In the absence of proof to the contrary, we find the merchandise to be as reported by the appraiser. The bags indicated on the invoice by the letter "C" are, in accordance with the proviso to paragraph 421, dutiable at 60 per cent ad valorem as assessed. The protest relative thereto claiming that the merchandise is dutiable at 45 per cent ad valorem under paragraphs 109, 199, 332, etc., is overruled.

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Regarding the bags marked "B," there is nothing in the record to indicate the character of the silk fabric of which the bags are made. From the appraiser's report it is a fair inference, however, that the material of chief value in the disputed articles is a plain, woven fabric of silk, ornamented with beads, the debatable question being, Are such bags dutiable at 60 per cent ad valorem under paragraph 402 or at 50 per cent ad valorem under paragraph 403 as manufactures of silk or of which silk is the component material of chief value?

Paragraph 402 provides for certain named articles or material and "silk goods ornamented with beads or spangles." The long list of enumerated goods or materials, together with articles embroidered by hand or machinery, or tamboured or appliquéd, and wearing apparel of every description exhausts the class of goods Congress intended to include in the first portion of paragraph 402. The subsequent provision, "and silk goods ornamented with beads or spangles," must be construed as embracing something outside of that class, regarding which the rule of *ejusdem generis* does not apply. Morimura Bros. *v.* United States, United States Court of Customs Appeals (T. D. 31941).

The bags involved in this case are composed in chief value of silk goods ornamented with beads, and by virtue of the first proviso to paragraph 402 they shall not pay a less rate of duty than 60 per cent, the highest rate applicable to "silk goods ornamented with beads." In harmony with the views herein expressed, the protest is overruled and the collector's decision affirmed.

(T. D. 32004—G. A. 7297.)

Rehearing.

1. Petition for Rehearing and an Appeal Filed at the Same Time.

Where a petition for rehearing and an appeal from a decision of the board are filed at the same time, the board may proceed with the rehearing, as the appeal is premature and a nullity.—United States *v.* Gallagher (T. D. 30365); Voorhees *v.* John T. Noye Mfg. Co. (151 U. S., 135); Kingman *v.* Western Mfg. Co. (170 U. S., 675).

2. Fan Chains—Beaded Articles—Toys.

Fan chains composed in chief value of beads are dutiable under paragraph 408, tariff act of 1897, as articles "composed wholly or in part of beads," rather than as "toys" under paragraph 418 of said act.—G. A. 6658 (T. D. 28391); G. A. 7288 (T. D. 31965).

United States General Appraisers, New York, November 13, 1911.

In the matter of protests 303830-27104, etc., of Gallagher & Ascher et al. against the assessment of duty by the collector of customs at the port of Chicago.

Before Board 1 (Sharretts, McClelland, and Chamberlain, General Appraisers; McClelland, G. A., absent).

Sharretts, *General Appraiser:* These protests are now before us for a decision based upon the testimony taken at a rehearing of the

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case. They were formerly decided in Abstract 20307 (T. D. 29449), wherein this board, under a misapprehension of the facts, held that certain necklaces and chains composed of beads and valued at less than 11 marks per gross were dutiable as toys at 35 per cent ad valorem under paragraph 418 of the act of 1897, as claimed by the importer in his protests. The chains had been assessed at 60 per cent ad valorem as articles composed in chief value of beads under paragraph 408 of said act. The classification of the necklaces, however, was not in issue, as they had been returned by the collector at 35 per cent ad valorem as toys, the same rate claimed in the protests.

On January 29, 1909, the thirtieth day after the above decision of this board, counsel for the United States filed a petition for rehearing, as permitted by section 1, act of May 27, 1908 (35 Stat. L., 403; T. D. 29044), which petition was granted, and, on the same day, the collector of customs at the port of Chicago filed an application for review of the case in the Circuit Court for the Northern District of Illinois. On February 8, 1909, the rehearing was held and the Government's evidence was received subject to the objection of counsel for the importers, who contended that the board was without jurisdiction to proceed with the rehearing by reason of the pending proceedings for review in the Circuit Court.

In G. A. 6940 (T. D. 30110) this board rendered an interlocutory decision on the question of jurisdiction, in which permission was requested of the court to withhold the record and continue with the rehearing proceedings, subject to such instruction as the court might see fit to issue. When the question came up in the Circuit Court for the Northern District of Illinois that court handed down a decision (T. D. 30365) holding that by reason of the allowance of the rehearing the appeal was premature and should be dismissed without prejudice.

In due time the case has now come before us for a decision on the merits. We hold that the objection made by counsel for the importers to the jurisdiction of the board to take further testimony at the rehearing proceedings on March 3, 1909, was not well taken and overrule the same. The board was given power to grant rehearings by the act of May 27, 1908, which act amended the customs administrative act of June 10, 1890. The law states that the decision of the board shall be final, except in case of an application for review in the circuit courts, and provides as follows:

> *Provided, however,* That the board of three general appraisers, or a majority of them, who decided the case may, upon motion of either party, within thirty days next after their decision, and not afterwards, grant a rehearing of said case when, in their opinion, the ends of justice may require it.

We hold that the appeal to the Circuit Court was premature. Any appeal to a higher tribunal from a decision of this board must be

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treated as a nullity if a rehearing of the cause has been granted within the time prescribed by law, whether the appeal be prior or subsequent to the granting of the rehearing. United States *v.* Gallagher (T. D. 30365); Voorhees *v.* John T. Noye Mfg. Co. (151 U. S., 135); and Kingman *v.* Western Mfg. Co. (170 U. S., 675).

The testimony taken on the rehearing clearly establishes that the chains in question are not toys, but are known as "fan chains" and are sold to adults to be worn about the neck or waist for use in carrying fans or other articles of like nature. On the authority of G. A. 6658 (T. D. 28391) and G. A. 7288 (T. D. 31965), we overrule the protests, the collector's decision in each case being affirmed.

(T. D. 32005—G. A. 7298.)

Collar supporters—Coated-wire articles.

Collar supporters made of steel wire covered with and in chief value of silk, bent into a series of open loops and cut into sizes measuring about 2½ and 3½ inches in length, the ends of the wire being turned back and soldered so as to form a closed loop at each end, in which condition they are ready to be used as supports for women's collars, are properly dutiable as manufactures in chief value of silk at the rate of 50 per cent ad valorem under paragraph 403, tariff act of 1909.

United States General Appraisers, New York, November 13, 1911.

In the matter of protests 465873, etc., of J. W. Schloss & Co. against the assessment of duty by the collector of customs at the port of New York.

Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers).

HOWELL, *General Appraiser:* These protests involve certain collar supporters made of thin wire covered with silk. Duty was assessed thereon at the rate of 50 per cent ad valorem as manufactures in chief value of silk under paragraph 403, tariff act of 1909. They are claimed to be properly dutiable under paragraph 135 of said act either as iron or steel wire covered with silk, or as articles manufactured wholly or in chief value of such wire. They are also claimed to be dutiable as manufactures of metal at the rate of 45 per cent ad valorem under paragraph 199 of said act. The material portion of paragraph 135 reads as follows:

Round iron or steel wire, not smaller than number thirteen wire gauge, one cent per pound; smaller than number thirteen and not smaller than number sixteen wire gauge, one and one-fourth cents per pound; smaller than number sixteen wire gauge, one and three-fourths cents per pound: *Provided,* That all the foregoing shall pay duty at not less than thirty-five per centum ad valorem; all wire composed of iron, steel, or other metal except gold or silver, covered with cotton, silk, or other

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material, corset clasps, corset steels, dress steels, and all flat wires, and steel in strips, not thicker than number fifteen wire gauge and not exceeding five inches in width, whether in long or short lengths, in coils or otherwise, and whether rolled or drawn through dies or rolls, or otherwise produced, and all other wire not specially provided for in this section, shall pay a duty of not less than thirty-five per centum ad valorem; on iron or steel wire coated by dipping, galvanizing, or similar process with zinc, tin, or other metal, there shall be paid two-tenths of one cent per pound in addition to the rate imposed on the wire of which it is made: *Provided further*, That articles manufactured wholly or in chief value of any wire or wires provided for in this paragraph shall pay the maximum rate of duty imposed in this section upon any wire used in the manufacture of such articles and in addition thereto one cent per pound: *And provided further*, That no article made from or composed of wire shall pay a less rate of duty than forty per centum ad valorem.

The articles in question are made of silk-covered steel wire, bent into a series of open loops and cut into short lengths, with the ends of the wire turned back and soldered so as to form a closed loop at each end, thus completing the article, which is then ready to be sewed into the inside of a woman's collar as a support to keep the collar upright. The articles are made in sizes of about 2½ and 3½ inches in length, respectively.

Manifestly, these articles are something more than merely covered wire. They are in fact articles made of covered wire, and the second proviso to paragraph 135 prescribes that they "shall pay the maximum rate of duty imposed in this section upon any wire used in the manufacture of such articles and in addition thereto 1 cent per pound," subject to the further proviso in the paragraph that the rate of duty shall not be less than 40 per cent ad valorem.

Our first inquiry then is, what is the rate of duty imposed upon the silk-covered wire of which the articles are made? The importers appear to take it for granted that paragraph 135 provides a rate of 35 per cent ad valorem upon such wire. This, however, is not the case. The only mention of such wire in the paragraph is in the provision that it shall pay a duty of "not less than" 35 per cent ad valorem. This is a provision fixing a minimum rate, but the paragraph fails to fix the primary duty on covered wire, and there is no other provision in the act fixing such duty. Since the paragraph fixes only a minimum rate of duty on articles manufactured wholly or in chief value of wire covered with silk, and as there is no primary rate specified, we must look elsewhere in the statute to find the applicable rate.

It is admitted that the silk wound around the wire is the component material of chief value, and, as we do not find the articles elsewhere more specifically provided for, we hold that they are properly dutiable as manufactures of silk, as assessed.

The protests are accordingly overruled, and the decision of the collector in each case is affirmed.

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(T. D. 32006.)

Abstracts of decisions of the Board of General Appraisers.

Board 1.—Sharretts, McClelland, and Chamberlain. *Board 2.*—Fischer, Howell, and Cooper. *Board 3.*—Waite, Somerville, and Hay.

BEFORE BOARD 1, NOVEMBER 8, 1911.

No. 27077.—BOTTLES—JARS—CHEMICAL GLASSWARE.—Protests 334885, etc., of Bausch & Lomb Optical Co. (Rochester). Opinion by Sharretts, G. A.

Glass bottles or flasks and jars, and articles of blown glass combined with molded glass parts, classified as glass bottles and blown glassware under paragraph 100, tariff act of 1897, were claimed to be dutiable as molded glass bottles and jars (par. 99) and manufactures of glass (par. 112). Protests sustained.

No. 27078.—PROTESTS OVERRULED.—Protests 152638, etc., of Malhami & Son et al., protests 407509, etc., of Louis Metzger & Co. et al., and protests 244631, etc., of W. R. Noe et al. (New York). Opinions by Sharretts, G. A.

Protests overruled for want of merit.

No. 27079.—FUR SKINS, DRESSED—BEAVER STRIPS.—Protests 513802, etc., of H. D. Fertel et al. (New York). Opinion by McClelland, G. A.

Protests sustained as to furs dressed on the skin and beaver strips. G. A. 7063 (T. D. 30765) and G. A. 7109 (T. D. 30990) followed.

No. 27080.—FEATHER ARTICLES.—Protests 262261, etc., of Germain, Hoffbauer & Helm Co. (New York). Opinion by McClelland, G. A.

Feather articles in part of metal classified as ornamental feathers under paragraph 425, tariff act of 1897, were held dutiable as manufactures in part of metal (par. 193). Protests sustained in part.

No. 27081.—PROTESTS OVERRULED.—Protests 494843, etc., of Dattelbaum Bros. et al., and protest 517592 of Knauth, Nachod & Kuhne (New York). Opinions by McClelland, G. A.

Protests overruled for want of merit.

No. 27082.—FRESH-WATER FISH.—Protest 511173 of G. E. Clark (Pembina). Opinion by Chamberlain, G. A.

Fresh-water fish were held dutiable under paragraph 271, tariff act of 1909, as fresh-water fish, as claimed by the importer, rather than as fish in packages of less than one-half barrel (par. 270), as assessed.

No. 27083.—ARTICLES OF PERSONAL ADORNMENT—GUN-METAL MESH BAGS—PURSES—MATCH BOXES—SMOKERS' ARTICLES.—Protests 420519, etc., of Emrich, King & Schorsch (New York). Opinion by Chamberlain, G. A.

Protests sustained as to gun-metal mesh bags, purses, match boxes, chains, and smokers' articles. G. A. 7129 (T. D. 31089) and G. A. 7102 (T. D. 30942) followed.

No. 27084.—PROTESTS OVERRULED.—Protest 515828 of Roessler & Hasslacher Chemical Co. (Newport News), and protest 508488 of P. E. Anderson & Co. (New York). Opinions by Chamberlain, G. A.

Protests overruled for want of merit.

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BEFORE BOARD 2, NOVEMBER 8, 1911.

No. 27085.—SUPERCALENDERED AND EMBOSSED GREASE-PROOF PAPER.—Protest 517692 of M. Kaber & Son Co. (Cleveland). Opinion by Fischer, G. A.

Protest sustained as to supercalendered and embossed grease-proof paper. G. A. 7136 (T. D. 31133) followed.

No. 27086.—CYLINDRICAL METAL CONTAINERS.—Protests 422266, etc., of Braun Chemical Co. et al. (Los Angeles), protests 478869, etc., of Balfour, Guthrie & Co. et al. (Portland, Oreg.), and protests 486709, etc., of Atkins, Kroll & Co. et al. (San Francisco). Opinions by Fischer, G. A.

Protests sustained as to cylindrical metal containers holding oil of lemon, caustic potash, chloride of lime, carbolic-acid crystals, biturine solution, caustic soda, bleaching powder, chloride of calcium, chloride of magnesium, and sheep dip. United States *v.* Garramone (T. D. 31577), United States *v.* Braun (T. D. 31596), and Abstract 26595 (T. D. 31866) follo e

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No. 27087.—BOOKS IN FOREIGN LANGUAGES—DIARIES.—Protests 489777, etc., of Bunrindo Book Store (Los Angeles).

Japanese diaries classified as books not specially provided for under paragraph 416, tariff act of 1909, were claimed to be free of duty as "books * * * printed chiefly in languages other than English" (par. 518). Protests sustained.

FISCHER, *General Appraiser:* * * * The books are diaries, and pages for the days of the week in each month are reserved for the registering of daily duties, events, etc. Considerable printed matter, all of which is exclusively in the Japanese language, is present in the books, and we believe that they fairly fall within the provisions of paragraph 518. Note ruling in G. A. 5450 (T. D. 24735). The fact that the books have blank pages for the purpose of recording memoranda, in addition to the printed text, would not, in our opinion, warrant their exclusion from the paragraph providing for books printed in a foreign language.

No. 27088.—STAMPED STEEL SHAPES.—Protests 522932, etc., of Ignaz Botstiber (New York). Opinion by Fischer, G. A.

Stamped steel shapes classified as manufactures of metal under paragraph 199, tariff act of 1909, were held dutiable as stamped shapes (par. 131), as claimed by the importer.

No. 27089.—PROTESTS OVERRULED.—Protest 361199–28937 of G. W. Sheldon & Co. (Chicago), and protests 346413, etc., of F. L. Smidth & Co. et al. (New York). Opinions by Fischer, G. A.

Protests overruled for want of merit.

No. 27090.—PROTESTS OVERRULED.—Protests 415747, etc., of R. Pierson & Co. et al. (St. Louis). Opinion by Howell, G. A.

Protests overruled for want of merit.

No. 27091.—PROTESTS OVERRULED.—Protests 506244–37924, etc., of Carson, Pirie, Scott & Co. et al. (Chicago). Opinions by Cooper, G. A.

Protests overruled for want of merit.

BEFORE BOARD 3, NOVEMBER 8, 1911.

No. 27092.—CRUSHED PRUNES—JELLY—PRESERVED FRUITS.—Protests 281947, etc., of Meyer & Lange et al. (New York, Chicago, and Cleveland).

WAITE, *General Appraiser:* The commodity in question is the pulp of the prune, being produced by boiling dried prunes, removing the pits, and reducing the residue

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to a thick pulp, in which condition it is imported. This is made without the use of sugar and contains no alcohol. Some of the cases in question here arose under the law of 1897 and some under the law of 1909. Various claims are made by the importers, the one which seems to be relied upon being that the commodity is jelly, as provided for in paragraph 263, act of 1897, and paragraph 274, act of 1909. It has been assessed under the provision in those same paragraphs for edible fruits preserved in their own juices. Considerable testimony has been taken on the part of the importers with a view to establishing that this product is commercially known as jelly. We do not think, however, upon the whole record, that we can say the case is brought within the rule laid down in Maddock *v.* Magone (152 U. S., 368), which is as follows:

Necessarily the commercial designation is the result of established usage in commerce and trade, and such usuage, to affect a general enactment, must be definite, uniform, and general, and not partial, local, or personal.

In this connection the testimony on the part of the Government, given by men who have been long in the trade and who are extensive manufacturers of this article, is to the effect that they have never known it to be called or known as jelly, but, on the contrary, give other names applicable to preserved fruit, by which it has been known. Aside from this contradiction of testimony, the commodity is not jelly as it is known in common parlance. The board has expressed its opinion as to what jelly is and how it is made. In the case of Bogle & Scott et al., G. A. 6668 (T. D. 28428), the board, holding that marmalade and jam were not jellies, stated the true jelly to consist "merely of the juice of the fruit mixed with sugar, the same being cooked together to bring it to the right taste and consistency." The above decision was affirmed by the Circuit Court (175 Fed. Rep., 889; T. D. 30167) and by the Court of Customs Appeals (1 Ct. Cust. Appls., 144; T. D. 31188). The latter court, in making the distinction between marmalade and jelly, used the following language:

Marmalade is not a jelly, for the reason that a jelly is a preparation of the juice of fruit, thickened into a soft, stiff, homogeneous consistence, and usually semitransparent. That is to say, the marked difference between marmalade and jelly is that the one is made with the fruit itself boiled, while the other is made from the juice of the fruit.

This distinction is also applicable, we think, to a comparison between the crushed prunes here in question and jelly.

In G. A. 5635 (T. D. 25174) the board had under consideration the commodity here involved. It was there held to be fruit preserved in its own juice, citing G. A. 3661 (T. D. 17570), which decision was affirmed by the Circuit Court for the Southern District of New York in the case of United States *v.* Rosenstein (90 Fed. Rep., 801), and was subsequently followed by the board in G. A. 4357 (T. D. 20701).

In the case of Habicht, Braun & Co., G. A. 6726 (T. D. 28799), affirmed by the Customs Court of Appeals (1 Ct. Cust. Appls., 10; T. D. 30772), apricot and strawberry pulp, cooked without sugar and placed in hermetically sealed tins, was held to be properly dutiable as fruit preserved in its own juice.

Reference has been made to the case of Godillot & Co., G. A. 4267 (T. D. 20045), affirmed without opinion by the Circuit Court for the Southern District of New York on March 13, 1902, wherein the board held that the well-known commodity of bar-le-duc jelly, although it contained the pulp of the fruit, was dutiable as a jelly for the reason that it had been shown to be commercially known as a jelly, it being uniformly described and known as "bar-le-duc jelly." We note, however, from the testimony of one of the importers' witnesses in these cases now before us, that while he deals in the article which has been known as bar-le-duc jelly, it is neither labeled nor offered as jelly at the present time, for the reason that the Department of Agriculture prohibits the use of the word "jelly" on this article. This would seem to

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indicate a tendency to limit the use of the word "jelly" to that meaning which has been commonly accepted and which has been sanctioned by the decisions of the board and the courts above cited.

There seems to have been no uniform method of invoicing or naming the merchandise at bar, as it appears in the invoices under various names, such as "prunes in sugar," "crushed prunes in own juice," "prune jelly," "preserved prunes crushed in own juice," and "plums in own juice." Apparently it is most frequently designated "crushed prunes in own juice." This voluntary action on the part of the shippers, together with the testimony in the case, convinces us that a commercial designation as "jelly" has not been established, and that the importation is in no sense a true jelly such as is known and recognized by those dealing commercially in that commodity.

In protest 281947 the merchandise is invoiced as "prunes in sugar" and is described by the appraiser as "prunes that have been preserved by boiling in a sirup composed of sugar and water and are packed in air-tight tins containing about 11 pounds each." The goods were assessed as fruits preserved in sugar under paragraph 263, act of 1897. As no point was made regarding this protest at the hearing, and as the rate of duty is the same on such goods as is levied on fruits preserved in their own juices under the same paragraph, we affirm the assessment.

All the claims in the protests are overruled, the findings of the collector being affirmed.

No. 27093.—Protests Dismissed.—Protest 508523 of E. Dreyfous (New York). Opinion by Waite, G. A.

Protest dismissed on stipulations.

Before Board 2, November 10, 1911.

No. 27094.—Cylindrical Metal Containers.—Protests 392374, etc., of A. Klipstein & Co. et al. (Philadelphia). Opinion by Fischer, G. A.

Protests sustained as to cylindrical metal containers on the authority of Abstract 26485 (T. D. 31851).

No. 27095.—Books Chiefly in Foreign Languages—Conversation Manuals—School Books.—Protests 475081, etc., of P. H. Petry Co. et al. (New York). Opinion by Fischer, G. A.

Conversation manuals and school editions of Greek and Latin authors, classified as books under paragraph 416, tariff act of 1909, were held free of duty as books printed chiefly in languages other than English (par. 518), as claimed by the importers.

No. 27096.—Protests Overruled.—Protests 279807, etc., of American Trading Co. et al. (New York). Opinion by Fischer, G. A.

Protests overruled for want of merit.

(T. D. 32007.)

Drawback on automobile wind shields.

Drawback on automobile wind shields manufactured by the Troy Carriage Sunshade Co., of Troy, Ohio, with the use of imported plate glass.

Treasury Department, *November 14, 1911.*

Sir: Drawback is hereby allowed under section 25 of the tariff act of August 5, 1909, and the regulations promulgated thereunder (T. D.

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31695 of June 16, 1911), on automobile wind shields manufactured by the Troy Carriage Sunshade Co., of Troy, Ohio, with the use of imported plate glass. The allowance shall not exceed the quantity of glass actually contained in each wind shield exported.

The manufacturers' sworn statement, dated October 31, 1911, is transmitted herewith for filing in your office.

Respectfully, R. O. BAILEY,
(91351.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Cleveland, Ohio.*

(T. D. 32008.)

Additional list of customs notaries.

[Omitted from this edition.]

(T. D. 32009.)

Modification of Department Circular No. 47.

[Circular No. 66.]

TREASURY DEPARTMENT, *November 16, 1911.*

To National, State, and local quarantine officers, collectors of customs, shipowners and agents, and others concerned:

Until further notice, Department Circular No. 47 of July 19, 1911, "Addition to quarantine regulations—cholera bacillus carriers," is to apply only to infected vessels.

FRANKLIN MACVEAGH, *Secretary.*

(T. D. 32010.)

Horsehair hats.

Appeal directed from decision of the Board of United States General Appraisers of September 22, 1911, G. A. 7275 (T. D. 31881), involving the classification of certain horsehair hats, untrimmed.

TREASURY DEPARTMENT, *November 20, 1911.*

SIR: The Department is in receipt of your letter of the 13th instant inviting attention to the decision of the Board of United States General Appraisers of September 22, 1911, G. A. 7275 (T. D. 31881), wherein it was held that certain horsehair hats, untrimmed, which were assessed with duty by similitude as "articles composed of artificial or imitation horsehair" at the rate of 45 cents per pound and 60 per cent ad valorem under paragraph 405 of the tariff act of 1909, were properly dutiable by similitude to the "hats of straw" provided for in paragraph 422 of the said act at the rate of 35 per cent ad valorem.

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In view of the importance of the issue, you are hereby requested to file, in the name of the Secretary of the Treasury, an application with the United States Court of Customs Appeals for a review of the said decision in accordance with the provisions of subsection 29 of section 28 of the said tariff act of 1909.

Respectfully, JAMES F. CURTIS,
(92406.) *Assistant Secretary.*

Hon. WM. L. WEMPLE,
Assistant Attorney General, New York.

(T. D. 32011.)

Marking paper.

Paper sufficiently marked under section 7, act of 1909, where packages are marked to indicate the country of origin.

TREASURY DEPARTMENT, *November 20, 1911.*

To officers of the customs and others concerned:

Referring to the present practice of requiring all writing and other paper which is watermarked with the name of the manufacturer or otherwise to be also watermarked with the name of the country of origin, in accordance with the requirement of section 7 of the tariff act of August 5, 1909, I have to state that, in view of the fact that writing or other paper is not usually sold or purchased in single sheets but in packages, the department is of the opinion that the packages are the articles of commerce which should be required to be marked under the provisions of the said section.

Hereafter, all writing and other paper, whether watermarked or not, will be considered as sufficiently marked under section 7 of the said act where the wrappers, bands, or packages in which such paper is packed are properly marked to indicate the country of origin. You will be governed accordingly.

JAMES F. CURTIS, *Assistant Secretary.*

(T. D. 32012.)

Bonds.

Department can not authorize the issuance of special licenses to lade or unlade vessels at night under the act of February 13, 1911, without the giving of the bond required by that act.

TREASURY DEPARTMENT, *November 20, 1911.*

SIR: The department duly received your letter of August 21 last, relative to the bond required to be given upon the issuance to a bonded transportation company under the act of February 13, 1911, of a special license to lade and unlade bonded merchandise at night or on Sundays or holidays.

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Section 1 of the said act provides, among other things, that upon the arrival at any port of entry from another port in the United States of a vessel or conveyance belonging to a line designated as a common carrier of bonded merchandise the collector may grant a special license to lade or unlade the cargo of any such vessel or other conveyance at night. Section 3 of said act provides that before any such special license shall be granted a good and sufficient bond shall be given conditioned to indemnify and save the United States harmless from any and all losses and liabilities which may occur or be occasioned by reason of the granting of such special license.

Although it appears that a bond in addition to the common carrier's bond for the transportation of bonded merchandise is not necessary to protect the Government from loss in connection with the lading or unlading of bonded merchandise only, the department has no authority to waive a compliance with the express conditions of the statutes cited and can not therefore authorize the issuance of such special licenses without the bond required by statute being given. Carriers which hereafter may give a bond for the transportation of bonded merchandise may include therein a provision covering the lading and unlading of merchandise at night or on Sundays or holidays under said act of February 13, 1911, and carriers now bonded may, if they so desire, be rebonded for that purpose. Upon this being done no additional bond will be required under said act.

In the meantime you are hereby authorized to accept such bonds for the lading or unlading of bonded merchandise only without sureties in all cases in which the same can be done without loss or danger to the revenue.

Respectfully, JAMES F. CURTIS,
(43444.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *Chicago, Ill.*

(T. D. 32013.)

Drawback on refined glycerin.

Drawback on refined glycerin manufactured by William F. Jobbins (Inc.), of Aurora, Ill., wholly from imported crude glycerin.

TREASURY DEPARTMENT, *November 20, 1911.*

SIR: Drawback is hereby allowed under section 25 of the tariff act of August 5, 1909, and the regulations promulgated thereunder (T. D. 31695 of June 16, 1911), on glycerin refined by William F. Jobbins (Inc.), of Aurora, Ill., wholly from imported crude glycerin.

The allowance should be based on the quantity of imported glycerin used, to be determined by adding to the net weight of the exported article the necessary percentage of such weight to equal the loss in refining shown to have been sustained by the report of the appraiser

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to whom sworn samples of the crude and refined product must be submitted.

The manufacturer's sworn statement, dated October 24, 1911, is inclosed herewith for filing in your office.

Respectfully, JAMES F. CURTIS,
(60094.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *Chicago, Ill.*

(T. D. 32014.)

Drawback on furniture.

Drawback on furniture manufactured by the Hawks Furniture Co., of Goshen, Ind., in part from imported plate-glass mirrors.

TREASURY DEPARTMENT, *November 20, 1911.*

SIR: Drawback is hereby allowed under section 25 of the tariff act of August 5, 1909, and the regulations promulgated thereunder (T. D. 31695 of June 16, 1911), on furniture manufactured by the Hawks Furniture Co., of Goshen, Ind., in part from imported plate-glass mirrors.

The allowance shall not exceed one imported mirror for each article exported, no allowance being made for wastage.

The manufacturers' sworn statement, dated November 6, 1911, is transmitted herewith for filing in your office.

Respectfully, JAMES F. CURTIS,
(90904.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *Chicago, Ill.*

(T. D. 32015.)

Drawback on cocoa powders.

Drawback on cocoa powders manufactured by the Stephen L. Bartlett Co., of Boston, Mass., in part from imported cocoa.—T. D. 22370 of July 20, 1900, extended.

TREASURY DEPARTMENT, *November 20, 1911.*

SIR: The department's regulations of July 20, 1900 (T. D. 22370), providing for the allowance of drawback on sweetened cocoa powder, are hereby extended so far as applicable to cover the exportation of cocoa powders manufactured by the Stephen L. Bartlett Co., of Boston, Mass., in part from imported cocoa known as "Bensdorp's No. 14," in accordance with the manufacturers' sworn statement dated November 7, 1911, transmitted herewith for filing in your office.

In liquidation, the quantity of imported cocoa which may be taken as the basis for the allowance of drawback may equal the quantity used as claimed, provided it shall not exceed 40 per cent of the net weight of the exported article.

Respectfully, JAMES F. CURTIS,
(52918.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *Boston, Mass.*

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(T. D. 32016.)

Information of a confidential nature.

Information of a confidential nature contained in invoices and customs records not to be disclosed to persons not parties in interest.

TREASURY DEPARTMENT, *November 20, 1911.*

To collectors and other officers of the customs:

The department has received several complaints that information regarding invoices and other confidential matters has reached parties not entitled to receive the same. I therefore invite your attention to article 1408 of the customs regulations of 1908, relative to the disclosure of information relating to official documents and of permitting access to official records.

No information of a confidential nature should be furnished to any persons not parties in interest, that is, parties having a direct interest in the transactions, or their attorneys, and access to official records should not be permitted except by a person entitled to such privilege. Any violation of this regulation will be considered sufficient cause for removal from the service, and collectors, surveyors, naval officers, and appraisers will call the attention of all officers and employees to the regulations in such regard and will issue specific instructions so that there may be no further cause for complaint in this particular.

JAMES F. CURTIS, *Assistant Secretary.*

(T. D. 32017—G. A. 7299.)

Ham in tins—Prepared meat.

Smoked ham meat (from which the long bone has been removed, but which still contains the knuckle bone) put up in a hermetically sealed tin, the meat of one ham in a tin, is not within the provision of paragraph 284, tariff act of 1909, for "bacon and hams," but is dutiable under paragraph 286 as meat, prepared or preserved.

United States General Appraisers, New York, November 15, 1911.

In the matter of protest 486253 of H. Hackfeld & Co. (Ltd.) against the assessment of duty by the collector of customs at the port of Honolulu.

Before Board 3 (WAITE, SOMERVILLE, and HAY, General Appraisers; SOMERVILLE, G. A., absent).

WAITE, *General Appraiser:* The commodity in this case is invoiced as "Rundschnittschinken," which is interpreted in the protest of the importers to mean "round-cut ham." The commodity was assessed for duty at 25 per cent ad valorem under paragraph 286, tariff act of 1909, which provides for "meats of all kinds, prepared or preserved." It is claimed to be dutiable under paragraph 284, which covers "bacon and hams, four cents per pound."

No testimony has been introduced. However, from the report of the collector we learn that the commodity consists of smoked ham put up in hermetically sealed tins. We gather from the record that the meat of one ham is put into each tin, after having the long bone of the ham removed, leaving what the collector reports to be the "knuckle bone" in the ham. The question arises as to whether this commodity,

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in the condition in which it is imported, is provided for under the designation of "hams" in paragraph 284. In protests 402641, etc., Abstract 27132 (T. D. 32020), we passed upon a commodity similar in some respects to this, in that it was the meat of the ham. In that case, however, the entire bone had been removed, the ham had been cooked, and it was put up in single pieces of the ham in hermetically sealed tins varying in size and quantity of ham contained.

We do not feel called upon in this case to determine at what stage of the preparation, preservation, and change of form of the commercial ham the dividing line is to be found which will exclude this kind of commodity from the provisions of the statute as contained in paragraph 284. We are satisfied, however, that the merchandise here in question is not described by the term "hams" as used in the statute. It has been smoked and has been changed in form by the removal of the bone. The hermetical sealing in this class of goods is invariably accomplished by heating the container and contents sufficiently to sterilize, which process necessarily cooks the contents more or less; after which the sealing is done under heat by soldering or welding, or some equivalent process, so that the air is excluded and the contents of the container prevented from escaping. This process amounts to a preservation, as heretofore found by the board and the courts. See Habicht *v.* United States (1 Ct. Cust. Appls., 10; T. D. 30772).

While this commodity may be termed "ham," we do not think it is such a ham or such "hams" as paragraph 284 provides for. We therefore overrule the protest and sustain the finding of the collector.

(T. D. 32018—G. A. 7300.)

Locomotive.

LOCOMOTIVE—STEAM ENGINE—MANUFACTURES OF METAL.

Locomotives are not dutiable as manufactures of metal under paragraph 199, tariff act of 1909, but as "steam engines" under paragraph 197 of said act, that provision being broad enough to cover both stationary and portable steam engines.

United States General Appraisers, New York, November 18, 1911.

In the matter of protest 504524 of Joseph Blank against the assessment of duty by the collector of customs at the port of New York.

Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers).

FISCHER, *General Appraiser:* The merchandise in question is a four-wheeled locomotive of 50 horsepower capacity. It is a steam locomotive upon which duty was assessed at 45 per cent ad valorem under paragraph 199. tariff act of 1909, and which is claimed dutiable at 30 per cent ad valorem under paragraph 197, as a "steam engine."

The report of the local appraiser details the reasons that prompted the classification of the locomotive under paragraph 199, and reads as follows:

The merchandise in question consists of what is invoiced and commercially known as a locomotive, and in the opinion of this office a locomotive is not a steam engine within the meaning of the provision of paragraph 197 for all "steam engines," a steam locomotive, in addition to cylinder and strictly engine parts, comprising steam

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boiler, driving wheel, trucks, and other necessary equipment, such as feed pump, injector, and other parts for generating steam, none of which are essential parts of a steam engine. Return for duty was therefore made as a manufacture of metal, not specially provided for, at 45 per cent ad valorem under paragraph 199, act of 1909.

The only question before us is whether the term "steam engine" is to be given the limited meaning as contemplated by the above report. If it is, we must restrict the term to only such engines as are stationary. We are entirely clear that the words "all steam engines" in the paragraph under consideration are used to embrace portable and traveling engines as well as stationary engines. To illustrate, we find that Knight's Mechanical Dictionary defines "portable steam engine" as follows:

A steam engine *attached to a boiler* and capable of easy transportation. It is generally adapted for out-door work. Locomotives and traction engines are, strictly speaking, portable engines, but are not generally referred to by that name. See Locomotive; Traction engine.

The same dictionary defines "traction engine" as "a locomotive engine for drawing heavy loads upon common roads, or over arable land, as in agricultural operations," and a "locomotive" as "a self-moving, traveling *steam engine.*" The conclusion we reach is that the words "all steam engines" were used in paragraph 197 to include all varieties of such engines. This being so, to distinguish between the portable engines and the stationary kind, by holding that the former were not the kind of steam engines that Congress had in mind by the use of such words, would indeed be difficult to support under any view of the facts as we find them.

The protest is sustained, and the decision of the collector is hereby reversed.

(T. D. 32019—G. A. 7301.)

Hand-decorated booklets.

1. HAND-DECORATED BOOKLETS—DOUBTFUL CONSTRUCTION.

The provision for hand-decorated booklets in paragraph 412, tariff act of 1909, is independent of the limitation as to material qualifying the general provision for lithographic printing found in the introductory clause of said paragraph. At best this question is one of substantial doubt, which must be resolved in favor of the importer.

2. SAME.

Hand-decorated booklets with pyroxylin covers and paper inserts, pyroxylin chief value, are dutiable under paragraph 412, tariff act of 1909, as "booklets, decorated in whole or in part by hand, * * * whether or not lithographed," and not as manufactures of pyroxylin under paragraph 17 of said act.

United States General Appraisers, New York, November 18, 1911.

In the matter of protests 507002, etc., of W. Hazelberg et al. against the assessment of duty by the collector of customs at the port of New York.

Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers).

FISCHER, *General Appraiser:* In these cases the articles are booklets concededly decorated in whole or in part by hand or by spraying.

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The inserts of the booklets are of paper, and the cover in the one case is of pyroxylin and in the other of silk, paper, and pyroxylin. They have been returned as in chief value of pyroxylin. Duty was assessed at 65 cents per pound and 30 per cent ad valorem under paragraph 17, tariff act of 1909, and said goods are claimed dutiable at 15 cents per pound under the provision in paragraph 412 of said act, which reads:

Booklets, decorated in whole or in part by hand or by spraying, whether or not lithographed.

The Government contends that the provision for hand-decorated booklets is limited to booklets wholly or in chief value of paper, like all the other articles covered by paragraph 412 except those which the paragraph itself states may be of other materials. The importers urge that the provision for hand-decorated or sprayed booklets as found in paragraph 412 applies to all booklets that are decorated in the manner therein described of whatever material composed. There appears to be no question of fact involved, and the goods are dutiable as hand-decorated booklets if the provision for such articles is not subject to the limitation as to material (paper) found in the introductory clause of paragraph 412 as a qualifying phrase to lithographically printed articles in general. The opening clause of the said paragraph is:

Pictures, calendars, cards, labels, flaps, cigar bands, placards, and other articles, composed wholly or in chief value of paper, lithographically printed in whole or in part from stone, metal, or material other than gelatin (except boxes, views of American scenery or objects, and music, and illustrations when forming part of a periodical or newspaper, or of bound or unbound books, accompanying the same, not specially provided for in this section), shall pay duty at the following rates: * * *

In Abstract 24880 (T. D. 31335) the board said:

The paragraph is to be limited to lithographically printed articles, with the exception of certain specified goods, the provisions for which are so worded as to permit of the contrary. The presence of such nonlithographic provisions in this paragraph (412) is readily accounted for when it is observed that such goods were provided for in the paragraph of the act of 1897 that covered lithographic prints (400), and no doubt it was deemed unnecessary to provide for them elsewhere or to find some other paragraph wherein to incorporate them.

We will understand the nature of the change made by referring to the closing sentence of the paragraph in the previous act which covered the products of lithographic printing, and which read:

Books of paper or other material for children's use, containing illuminated lithographic prints, not exceeding in weight twenty-four ounces each, and all booklets and fashion magazines or periodicals printed in whole or in part by lithographic process or decorated by hand.

It will be noted that the above was independent from the other provisions for lithographic work under the old law; that the booklets,

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fashion magazines, or periodicals were provided for if either lithographed or decorated by hand, and were unlimited as to material; and as to books for children's use, it was expressly stated that the books could be of paper or other material provided that such books contained illuminated lithographic prints.

The paragraph (412) in the present act contains the said closing sentence of paragraph 400 (old act), and in its new form the provision for books for children's use was again by express terms extended to paper or other material, and the qualification as to illuminated lithographic prints was omitted; the provision for fashion magazines or periodicals was reenacted in exactly the same words; while the provision for booklets was altered so as to provide a high rate for hand-decorated booklets, whether or not lithographed, with a corresponding lower rate for lithographed nondecorated booklets.

As we view the change in such provisions, the word "booklets" standing alone in paragraph 412 must of necessity be qualified by the limitation as to material and lithographic printing found in the opening clause of the paragraph. The other provision for "booklets" in the paragraph applies to only such as are decorated by hand or by spraying. We believe it requires little argument to see that a nonlithographic hand-decorated booklet is not to be limited by a qualification as to material that attaches only to the product of lithographic printing. Similarly, it must be clear that the words "whether or not lithographed," qualifying decorated booklets, are necessary to make a clear line of demarcation between lithographed booklets, (1) such as are nondecorated, and (2) such as are decorated by hand or by spraying. The former find classification under the lower rate provided for booklets; the latter must pay the same rate as the nonlithographed hand-decorated booklet.

The conclusion we reach is that the provision for "booklets, decorated in whole or in part by hand or by spraying, whether or not lithographed," is one which may fairly be regarded as independent of the limitation as to material attached to and qualifying the general provision for lithographic printing found present in the opening clause of paragraph 412. At best the question is one of substantial doubt. As was said in United States *v.* Hatters' Fur Exchange (1 Ct. Cust. Appls., 198, 203; T. D. 31237):

> Under such circumstances the difficulty is resolved by the aid of the rule that in construing a tariff law, where there appears to be an equal and substantial balance between alternatives, the doubt should be resolved in favor of the importer. American Net & Twine Co. *v.* Worthington (141 U. S., 468); Eidman *v.* Martinez (184 U. S., 578).

The protests are sustained, and the decision of the collector in each case is modified accordingly.

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(T. D. 32020.)

Abstracts of decisions of the Board of General Appraisers.

Board 1.—Sharretts, McClelland, and Chamberlain. *Board 2.*—Fischer, Howell, and Cooper. *Board 3.*—Waite, Somerville, and Hay.

BEFORE BOARD 1, NOVEMBER 13, 1911.

No. 27097.—PROTESTS OVERRULED.—Protests 515825-3171, etc., of George Borgfeldt & Co. (New Orleans), and protest 380654 of Morimura Bros. (New York). Opinions by Sharretts, G. A.

Protests overruled for want of merit.

No. 27098.—CHINESE DRUG—FOOK LIN.—Protest 491720 of Doap Leun Hong & Co. (San Francisco). Opinion by Chamberlain, G. A.

A Chinese drug described as "fook lin" and classified as a medicinal preparation under paragraph 65, tariff act of 1909, was claimed to be dutiable as a drug advanced in value or condition (par. 20). Protest sustained. Abstract 25046 (T. D. 31380) followed.

No. 27099.—KIPPERED HERRING.—Protest 429282 of Sherwood & Sherwood (Port Townsend). Opinion by Chamberlain, G. A.

Protests sustained as to kippered herring. United States *v.* Rosenstein (1 Ct. Cust. Appls., 304; T. D. 31357) followed.

No. 27100.—FROZEN SMELTS.—Protests 491111, etc., of William A. Bird et al. (Buffalo). Opinion by Chamberlain, G. A.

Frozen smelts classified as fish in packages of less than one-half barrel under paragraph 270, tariff act of 1909, were claimed to be dutiable as frozen smelts (par. 272). Protests sustained.

No. 27101.—HYDROXIDE OF CHROME.—Protests 513797, etc., of Farbenfabriken of Elberfeld Co. (New York). Opinion by Chamberlain, G. A.

Protests sustained as to hydroxide of chrome. United States *v.* Continental Color & Chemical Co. (T. D. 31679) followed.

No. 27102.—ARTICLES OF PERSONAL ADORNMENT—ARTICLES OF UTILITY—IMITATION JET.—Protest 486314 of Emrich, King & Schorch, and protest 512249 of A. Lorsch & Co. (New York). Opinions by Chamberlain, G. A.

Gun-metal chain and gun-metal bags and purses classified as articles of personal adornment under paragraph 448, tariff act of 1909, and articles composed of base metal, blackened, set with imitation jet, classified as jewelry (par. 448), were claimed to be dutiable as manufactures of metal (par. 199) and manufactures of glass or paste (par. 109). Protests sustained. Note United States *v.* Beierle (1 Ct. Cust. Appls., 457; T. D. 31506).

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No. 27103.—PROTESTS OVERRULED.—Protest 515143 of William H. Masson (Baltimore), protest 507937 of American Express Co., and protest 520939 of F. L. Roberts & Co. (Boston), protests 330063–28133, etc., of Gage Brothers, and protest 557505–38547 of Charles G. Stone & Co. (Chicago), protests 417581, etc., of Grim & Baum (Hartford), protests 516761, etc., of J. F. Baker Chemical Co., protest 395388 of A. L. Cochran Co., and protest 496304 of A. A. Vantine & Co. (New York), protest 520952 of O. G. Hempstead & Son (Philadelphia), protest 511640 of George S. Bush & Co., and protests 518092, etc., of M. Furuya Co. et al. (Port Townsend), protest 417120 of C. H. Wyman (St. Louis), and protest 521674 of Wilder & Co. (Tampa). Opinions by Chamberlain, G. A.

Protests overruled for want of merit.

BEFORE BOARD 2, NOVEMBER 13, 1911.

No. 27104.—CYLINDRICAL METAL CONTAINERS.—Protests 439459–34158, etc., of N. K. Fairbank Co. et al. (Chicago). Opinion by Fischer, G. A.

Protests sustained as to cylindrical metal containers. United States *v.* Garramone (T. D. 31577) and United States *v.* Braun (T. D. 31596) followed.

No. 27105.—PROTESTS OVERRULED.—Protests 520462, etc., of Harry Angelo Co. et al. (New York). Opinion by Fischer, G. A.

ests overruled for want of merit.

No. 27106.—MALINES NETS.—Protests 488052, etc., of L. Hamburger & Co., protests 486799, etc., of Lichtenstein Millinery Co., protests 461535, etc., of F. Ludewig & Co. et al., protests 497876, etc., of W. Openhym & Sons, protests 497955, etc., of S. Oppenheimer & Levy, protests 484979, etc., and protests 498765, etc., of Voss & Stern et al., and protests 485063, etc., of P. K. Wilson & Son (New York). Opinions by Howell, G. A.

Protests sustained as to Malines nets. Abstract 24701 (T. D. 31255) and Abstract 25719 (T. D. 31654) followed.

No. 27107.—BOILED-OFF SILKS—SHANTUNGS.—Protests 14642h, etc., of John Menke & Co. (New York). Opinion by Howell, G. A.

Shantungs classified as boiled-off silks under paragraph 387, tariff act of 1897, were claimed to be dutiable as silks in the gum under the same paragraph. Protests sustained. G. A. 6715 (T. D. 28738) followed.

No. 27108.—COTTON EMBROIDERY.—Protest 443295 of Emery-Bird-Thayer Dry Goods Co. (Kansas City). Opinion by Howell, G. A.

Embroidery made on a cotton net and classified under paragraph 350, tariff act of 1909, as lace made on the Lever or Gothrough machine was claimed to be dutiable as cotton embroidery (par. 349). Protest sustained.

No. 27109.—WAX FIGURES—DOLLS—TOYS.—Protest 431979 of Scruggs, Vandervoort & Barney Dry Goods Co. (St. Louis).

HOWELL, *General Appraiser:* The goods in question are described in the invoice as "6 wax dolls." The appraiser reports that the goods "consist of wax figures on stands, for show windows or advertising purposes, dressed in silk and lace." They were assessed for duty by the surveyor as manufactures in chief value of silk at the rate of 50 per cent ad valorem under paragraph 403, tariff act of 1909. The importers claim that the goods are properly dutiable as dolls at the rate of 35 per cent ad valorem under paragraph 431 of said act.

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The only testimony in the case is that of an employee of the importing firm, who, on being asked to describe the goods, stated that—

They were small wax figures, and they were used in windows for display purposes for probably six weeks. After that they were sold to anybody who wanted to take them, either to use as a plaything or anything else.

He also testified that, although he did not know to what use the articles were to be put by the parties to whom they were sold, he thought that they were bought by them to be used for "display purposes." No testimony was offered as to whether the articles are in fact known as dolls.

There are no samples of the goods before us, but from the description given by the importers' witness we do not think the articles are the well-known toy dolls of commerce, but consist of diminutive figures in the form of ladies in fancy costume, such as are sometimes used by merchants to decorate their display or show windows.

On the record before us the protest must be, and it is hereby, overruled.

No. 27110.—Protests Overruled.—Protests 500840, etc., of Sinclair, Rooney & Co. (Buffalo), protest 489455–36769 of A. B. Fiedler & Sons (Chicago), and protest 500496 of Morimura Bros., protests 455977, etc., of Naday & Fleischer et al., protests 268584, etc., of Leon Rheims Co. et al., and protest 434346 of Samstag & Hilder Bros. (New York). Opinions by Howell, G. A.

Protests overruled for want of merit.

Before Board 3, November 13, 1911.

No. 27111.—Currency—Turkish Goods Invoiced in Francs.—Protest 427169 of A. & M. Karagheusian (New York). Opinion by Waite, G. A.

The merchandise in question was invoiced in francs and the total of the invoice was given in piasters. In converting this into United States money the collector used the franc value, and the importers claim he should have used the piaster value. Protest sustained. Abstract 23259 (T. D. 30601) followed.

No. 27112.—Protests Overruled.—Protests 489429–36669, etc., of C. L. Benson et al. (Chicago). Opinion by Waite, G. A.

Protests overruled for want of merit.

No. 27113.—Powdered Talc.—Protests 462202, etc., of Colgate & Co. (New York). Opinion by Hay, G. A.

Protests sustained as to powdered talc. Salomon *v.* United States (T. D. 31635) followed.

Before Board 1, November 15, 1911.

No. 27114.—Articles of Utility—Articles of Personal Adornment.—Protest 505660 of T. D. Downing & Co., protest 475842 of E. Hess, protests 449241, etc., of D. S. Hesse & Bro., protests 467694, etc., of G. W. Sheldon & Co., and protests 270430, etc., of Veit, Son & Co. (New York). Opinions by Sharretts, G. A.

Protests sustained as to beaded bags, gun-metal mesh bags, smokers' articles, vanity cases, bonbon boxes, and other articles of utility, imitation jet articles, and cut-paste articles. G. A. 7129 (T. D. 31089), G. A. 7102 (T. D. 30942), United States *v.* Beierle (1 Ct. Cust. Appls., 457; T. D. 31506), G. A. 7103 (T. D. 30943), and G. A. 6995 (T. D. 30444) followed.

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No. 27115.—Collodion Bracelets—Jewelry—Toys.—Protests 493683–36750, etc., of G. W. Sheldon & Co. (Chicago).

Bracelets composed entirely of collodion and classified as jewelry under paragraph 448, tariff act of 1909, were claimed to be dutiable as toys (par. 431). On the authority of G. A. 7019 (T. D. 30612) and G. A. 7281 (T. D. 31907) the board held that inasmuch as the articles were not composed of gold or platinum the assessment was incorrect.

Sharretts, *General Appraiser:* * * * Counsel for the importers, in his brief, cites Abstract 26687 (T. D. 31883) as authority for a decision holding that the merchandise in question should be assessed for duty as toys. In that case, however, the samples in evidence showed the merchandise to be small collodion bracelets of flimsy construction, which were clearly suitable only for use in the entertainment and amusement of children at play. The sample before us in this case, however, is heavier, more durable, and of better quality and construction than the merchandise covered by Abstract 26687, *supra*, and it would seem to be suitable to be worn by children as articles of adornment. In the absence of testimony to the effect that the bracelets here in question are known to the trade as toys, we are unable to find that they are dutiable at 35 per cent ad valorem, as claimed in the protests. The protests are overruled and the decision of the collector, although erroneous, can not be disturbed.

No. 27116.—Printed Celluloid Cards—Printed Matter.—Protest 279074–25566 of Downing, Judae & Co. (Chicago). Opinion by Sharretts, G. A.

Celluloid cards printed with the words "Best Wishes" and classified as articles of collodion under paragraph 17, tariff act of 1897, were held dutiable as printed matter (par. 403), as claimed by the importers.

No. 27117.—Catgut Strings for Musical Instruments.—Protests 520379, etc., of Kay Graham Co. (New York). Opinion by Sharretts, G. A.

Protests sustained as to catgut strings on the authority of Abstract 26260 (T. D. 31813).

No. 27118.—Toy Jewelry.—Protests 429395, etc., of Davies, Turner & Co. et al. (New York). Opinion by Sharretts, G. A.

Beaded necklaces classified as beaded articles under paragraph 421, tariff act of 1909, were held dutiable as toys (par. 431). Protests sustained on the authority of G. A. 7251 (T. D. 31786).

No. 27119.—Favors—Articles of Personal Adornment.—Protest 420986 of Marks & Meyer Importing Co. (New York).

Sharretts, *General Appraiser:* Based upon the appraiser's report and the invoice description we find the merchandise in question to be small articles in the form of miniature purses, bottles, watches, etc., composed in chief value of gun metal. These articles are designed to be worn as favors at a masquerade ball, banquet, or similar function. They were assessed for duty at rates equivalent to 85 per cent ad valorem under paragraph 448, act of 1909.

Miniature favors of the kind in question are intended for distribution and temporary use during the progress of a ball, banquet, or similar occasion, after which they are thrown aside or preserved as a souvenir of the occasion. Such a transient use does not, in our opinion, bring them within the terms of paragraph 448 for articles designed to be worn on apparel or carried on or about or attached to the person. It not infrequently happens, however, that jewelry intended for permanent use as articles of personal adornment is distributed as favors. In such cases the ultimate use determines the classification, and they would seem to be dutiable at 60 or 85

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per cent ad valorem, dependent upon the metal of which composed, under paragraph 448 of said act. The goods now in question are not of such a description. They are miniature examples of articles of utility, as shown by the appraiser's report, and their usefulness ceases with the occasion for which they were intended.

In consonance with the views herein expressed, we sustain the claim in the protest that the merchandise the subject of appeal is dutiable at 45 per cent ad valorem under paragraph 199 of the tariff act of 1909. The collector's decision is reversed.

No. 27120.—Rosaries.—Protest 354817 of S. Handal & Bro. (New York). Opinion by Sharretts, G. A.

Protests sustained as to rosaries on the authority of G. A. 7053 (T. D. 30731).

No. 27121.—Beaded Ornaments—Artificial Flowers.—Protest 333343 of A. Mayet (New York). Opinion by Sharretts, G. A.

Ornaments in the shape of flowers and leaves made from colored-glass beads strung on metal wire, which were classified as beaded articles under paragraph 408, tariff act of 1897, were held dutiable as artificial flowers and leaves (par. 425). Protest sustained. G. A. 6711 (T. D. 28710) followed.

No. 27122.—Toy Fans.—Protest 324815 of George Borgfeldt & Co. (New York). Opinion by Sharretts, G. A.

Protests sustained as to toy fans. Morimura *v.* United States (175 Fed. Rep., 887; T. D. 30129) followed.

No. 27123.—Protests Overruled.—Protests 319667, etc., of Moses Norris et al. (Baltimore), protests 224882, etc., of Charles D. Stone & Co. et al. (Chicago), protest 473767 of American Express Co., protest 443910 of Lambert Bros., protest 489586 of T. Meadows & Co., protest 403462 of B. Shackman & Co., protest 227827 of A. L. Tuska, and protests 399871, etc., of Zadek Bros. (New York), and protests 383004, etc., of F. B. Vandegrift & Co. et al. (Philadelphia). Opinions by Sharretts, G. A.

Protests overruled for want of merit.

Before Board 2, November 15, 1911.

No. 27124.—Cylindrical Metal Containers.—Protests 411384, etc., of Edward Hill's Son & Co. et al. (New York). Opinion by Fischer, G. A.

Protest sustained as to cylindrical metal containers on the authority of United States *v.* Garramone (T. D. 31577), and United States *v.* Braun (T. D. 31596).

No. 27125.—Protests Overruled.—Protests 292837, etc., of Davies, Turner & Co. et al. (Boston), protests 507982-37665, etc., of Kawin & Co. et al. (Chicago), and protests 419310, etc., of Amerman & Patterson et al., protests 132519, etc., of De La Vergne Ref. Machine Co. et al., protests 287957, etc., of Knauth, Nachod & Kuhne et al., and protests 514110, etc., of John Wanamaker et al. (New York). Opinions by Fischer, G. A.

Protests overruled for want of merit.

No. 27126.—Cotton and Silk Fabrics.—Protest 471141-34993 of G. W. Sheldon & Co. (Chicago). Opinion by Howell, G. A.

Fabrics classified as being composed in chief value of silk under paragraph 399, tariff act of 1909, were held dutiable as cloth composed of cotton and silk, cotton chief value (par. 321), as claimed by the importers.

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No. 27127.—Hemmed Silk Handkerchiefs.—Protest 500373-36919 of Wilson Bros. (Chicago). Opinion by Howell, G. A.

Silk handkerchiefs classified as hemstitched under paragraph 400, tariff act of 1909, were held dutiable as hemmed handkerchiefs under the same paragraph. Protest sustained.

No. 27128.—Elastic Belting.—Protests 431077, etc., and 449316, of Samstag & Hilder Bros. (New York). Opinions by Howell, G. A.

Merchandise classified as silk belting under paragraph 401, tariff act of 1909, was held dutiable as manufactures of rubber (par. 463). Protests sustained. Note Abstract 25606 (T. D. 31616).

No. 27129.—Protests Overruled.—Protests 424623, etc., of Longini Hat Co. (Eagle Pass), protests 339954, etc., of G. A. & E. Meyer et al., protests 424879, etc., of Leon Rheims Co. et al., and protests 447505, etc., of A. L. Tuska, Son & Co. (New York), and protest 486657 of Strawbridge & Clothier (Philadelphia). Opinions by Howell, G. A.

Protests overruled for want of merit.

No. 27130.—Chinese Shoes.—Protests 475192, etc., of Chee Chong & Co. (San Francisco). Opinion by Cooper, G. A.

Chinese shoes classified as silk wearing apparel under paragraph 402, tariff act of 1909, were held dutiable as leather shoes (par. 451). Protests sustained on the authority of G. A. 6874 (T. D. 29595).

No. 27131.—Protests Overruled.—Protests 516257, etc., of Brown, Durrell Co. et al. (Boston), and protests 390699, etc., of Naday & Fleischer et al., and protests 296269, etc., of G. Reis & Bro. et al. (New York). Opinions by Cooper, G. A.

Protests overruled for want of merit.

Before Board 3, November 15, 1911.

No. 27132.—Ham in Tins—Prepared Meats.—Protests 402641, etc., of Cerecedo Hermanos & Co. (San Juan).

Waite, *General Appraiser:* These cases were decided on May 18, 1911, Abstract 25617 (T. D. 31616), sustaining the finding of the collector. A rehearing was granted on the theory that the importers would be able to show commercial designation. When the cases came on for rehearing no testimony was offered, and they were again submitted on the record as previously made. In the original record no evidence was offered except the filing of a sample of the merchandise, which shows the commodity to be cooked ham put up in hermetically sealed tins. It is not the whole ham; the bone has been removed and the flesh of the ham put up in different sized packages described on the printed label as "boneless cooked ham in one piece."

We have not examined to see whether more than one piece is put in a tin or not. Duty was assessed thereon at 25 per cent ad valorem under paragraph 286, tariff act of 1909, which provides for "meats of all kinds prepared or preserved." The importers claim it should have been assessed under paragraph 284, which provides for "bacon and hams, four cents per pound." We can not escape the conclusion that this commodity is meat prepared or preserved. It has been cooked and is ready for the table in its present condition, with the exception, perhaps, of cutting or slicing it. It having been cooked, salted, and the bone taken out, we must conclude that it is prepared. Both the court and the board have held that putting up in hermetically sealed tins is a preserving process, Habicht *v.* United States (1 Ct. Cust.

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Appls., 10; T. D. 30772); hence it is both prepared and preserved. There is nothing in this case to warrant us in finding that there is any commercial designation which would classify this commodity under the paragraph which provides for "hams."

The protests claim "these are hams, commercially known and dealt in as hams." It will be noted that the word as used in the statute is in the plural—"hams." This, we take it, was intended to cover the specific article "a ham," which would be the singular, and also any quantity or number of hams. We do not think, however, that it is intended to cover any preparation of the meat of the ham, such as minced ham or pickled ham, or any other portions of the meat of the ham which may be offered upon the market for food purposes, but is merely intended to cover what is generally known and recognized as a ham or hams in their entirety. We do not think that any quantity of ham prepared, cut, or preserved, though it might be still known as ham, should be classified under paragraph 284 as "hams." The protests are therefore overruled, the collector's assessment being affirmed.

No. 27133.—Ginseng Roots—Drugs—Nursery Stock.—Protest 483336 of Herman Kopplin (Marquette).

Waite, *General Appraiser:* The commodity in question here is invoiced as "9 boxes of ginseng roots." An annotation in red ink on the invoice states they are ginseng roots suitable for planting. It appears that they were imported from Canada by the man who grew them there for the purpose of replanting in the United States to propagate ginseng.

Ginseng root is known in commerce, and considerable quantities of it are imported from China, where it is grown and used by the Chinese as a medicine, on the theory that it possesses strengthening qualities. This root when prepared and imported, and when grown in this country and exported, is subjected to considerable treatment by drying and cleansing, so much so that the board has held it to be advanced in value by such treatment. See G. A. 5530 (T. D. 24883), relating to ginseng root, which had been assessed as a drug advanced in value and was claimed to be a drug not advanced in value. The only question decided by the board was that it had by treatment been advanced in value, the question as to whether it was a drug being reserved as not necessary to decide in that case. That decision was followed by the board subsequently in Abstract 16102 (T. D. 28308); and the Government has uniformly held this commodity to be a drug, and when in the condition in which it is usually imported has considered it advanced in value and assessed it under the appropriate paragraph of the law as a drug advanced in value.

In this case the assessment was made under paragraph 264, tariff act of 1909, as a plant commonly known as nursery stock. We do not think this is a correct assessment. There is nothing to show that it is ever considered greenhouse stock; it is not propagated or grown for its fruit or for ornamental purposes. The importer claims under paragraphs 572 and 668. Paragraph 572 provides for "fruit plants, tropical and semitropical, for the purpose of propagation or cultivation." The importation clearly does not come under that head. The claim under paragraph 668 is presumably made under that part of the paragraph which provides for "bulbs and bulbous roots, not edible and not otherwise provided for." We do not think we would be justified in holding that this is a bulbous root, as that term is used in the tariff act. It is no more a bulbous root than the root of the carrot is, in our judgment.

Following the decisions of the board and the practice of the department in the assessment of ginseng root, we are inclined to think that this commodity, after it has been cleansed and dried and prepared for market, is assessable as a drug advanced

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in value under paragraph 20; but where it has not been advanced in value, it should be free as a crude drug under paragraph 559. The importer, however, not having made that claim, the protest must be overruled and the assessment of the collector allowed to stand.

No. 27134.—Weight of Cheese in Brine.—Protests 493418, etc., of Lekas & Drivas et al. (New York). Opinion by Waite, G. A.

The board sustained the claim of the importers that in ascertaining the weight of cheese in brine allowance should be made for the brine.

No. 27135.—Gauge of Ale.—Protest 505498 of W. A. Ross & Bro. (Philadelphia). Opinion by Waite, G. A.

The board sustained the importers' claim that ale had been assessed on the basis of an excessive gauge, the collector having admitted error.

No. 27136.—Hyacinth Bulbs.—Protests 472336, etc., of C. C. Pollworth Co. et al. (Milwaukee). Opinion by Waite, G. A.

Protests sustained as to hyacinth bulbs. Breck *v.* United States (T. D. 31576) followed.

No. 27137.—Smokers' Articles.—Protest 496870 of Emrich, King & Schorsch (New York). Opinion by Hay, G. A.

Cigarette cases classified as articles of personal adornment under paragraph 448, tariff act of 1909, were held dutiable as smokers' articles (par. 475), as claimed by the importers.

No. 27138.—Tam O'Shanter Stones.—Protest 521626 of R. J. Waddell & Co. (New York.) Opinion by Hay, G. A.

Tam O'Shanter stones classified as articles of earthy or mineral substances under paragraph 95, tariff act of 1909, were held dutiable as unenumerated manufactured articles (par. 480). Protest sustained.

No. 27139.—Protests Overruled.—Protests 508964–37558, etc., of Gallagher & Ascher et al. (Chicago), protests 419506, etc., of M. Heimann & Co. (Milwaukee), and protest 515848 of George Borgfeldt & Co., protests 513750, etc., of M. J. Corbett & Co. et al., and protest 515390 of Oppenheimer Brussel Importing Co. (New York). Opinions by Hay, G. A.

Protests overruled for want of merit.

No. 27140.—Protests Abandoned.—Protest 476005 of A. S. Fraser (Buffalo).

Protest abandoned.

Before Board 1, November 17, 1911.

No. 27141.—Imitation Jet.—Protest 487121 of B. Altman & Co. (New York). Opinion by Sharretts, G. A.

Protest sustained as to imitation jet articles on the authority of United States *v.* Beierle (1 Ct. Cust. Appls., 457; T. D. 31506).

No. 27142.—Creosote Oil—Coal-Tar Preparation.—Protest 477416 of Snow's United States Sample Express Co. (New York). Opinion by Chamberlain, G. A.

Merchandise classified as a coal-tar preparation under paragraph 15, tariff act of 1909, was held free of duty as creosote oil (par. 536). Protest sustained on stipulation of counsel for the importers and the Assistant Attorney General for the United States.

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No. 27143.—Kippered Herring.—Protest 391658 of W. H. Masson (Baltimore). Opinion by Chamberlain, G. A.

Protest sustained as to kippered herring. United States *v.* Rosenstein (1 Ct. Cust. Appls., 304; T. D. 31357) followed.

No. 27144.—Fish in Commercial Half-Barrel Packages.—Protest 452511 of Zucca & Co. (New York).

Chamberlain, *General Appraiser:* The merchandise under protest consists of a shipment of 100 drums of codfish. Duty was assessed at the rate of 30 per cent ad valorem under paragraph 270 of the tariff act of 1909 as fish in packages of less than one-half barrel, and it is claimed to be dutiable under paragraph 273 of said act at ¾ cent per pound as dried fish.

This protest was originally decided by the board on May 31, 1911, Abstract 25764, (T. D. 31654). An application for rehearing having been granted, the protest again comes up for decision upon a record which discloses a new state of facts. It appears that out of the entire shipment of 100 drums only 5 were weighed by the official examiner, who reported an average weight of 98⅔ pounds. The record further shows that the size drums here in question is the accepted commercial drum containing 100 pounds of fish. The issue at bar is therefore identical with that passed upon by the board in Abstract 23837 (T. D. 30865), on the authority of which we sustain the claim in the protest and reverse the decision of the collector.

No. 27145.—Protests Overruled.—Protests 513290, etc., of Davies, Turner & Co. et al. (New York). Opinion by Chamberlain, G. A.

Protests overruled for want of merit.

Before Board 2, November 17, 1911.

No. 27146.—Cylindrical Metal Containers.—Protests 504487, etc., of Amerman & Patterson et al. (New York). Opinion by Fischer, G. A.

Protests sustained as to cylindrical metal containers. United States *v.* Garramone (T. D. 31577) and United States *v.* Braun (T. D. 31596) followed.

No. 27147.—Cigarette-Machinery Belting.—Protest 523078 of Edwin Horrax (New York). Opinion by Fischer, G. A.

Protest sustained as to belting for cigarette machinery on the authority of United States *v.* Horrax (1 Ct. Cust. Appls., 142; T. D. 31187).

No. 27148.—Protests Overruled.—Protests 395965, etc., of American Express Co. et al., protests 28192h, etc., of Henry E. Frankenberg & Co. et al., protests 453987, etc., of H. Schloss et al., and protests 292631, etc., of Souvenir Post Card Co. et al. (New York). Opinions by Fischer, G. A.

No. 27149.—Fancy Figures—Dolls—Favors.—Protest 425990 of Raphael Weill & Co. (San Francisco).

Favors classified as manufactures of silk under paragraph 403, tariff act of 1909, were claimed to be dutiable as dolls (par. 431). Protest overruled.

Howell, *General Appraiser:* * * * The official sample representing item No. 3586 consists of a doll's head and shoulders mounted upon a base about 4 inches high which contains a receptacle for holding a few candies or bonbons. The completed figure is made to represent a lady in fashionable attire. A sample of the remaining item number was admitted in evidence and is similar to the official sample, except that the base does not contain a receptacle for holding candies or bonbons.

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On the hearing of the protest the importers endeavored to prove that these articles are the usual toy dolls of commerce, but we think the testimony falls far short of showing that they are such dolls as are chiefly used for the amusement or entertainment of children. On the contrary, the importers' witness testified that the articles were not sold in the toy department of their store, but were sold in the art department, and that they were sold as favors to be used at dinner parties or similar functions.

The articles are unquestionably fancy figures intended to be used as favors or table decorations at social functions, and are not such dolls as are generally recognized as playthings for children.

No. 27150.—Trimmed Hats—Feather Articles—Ribbons—Trimmings.—Protest 410820-32019 of Gage Bros. & Co. (Chicago). Opinion by Howell, G. A.

Trimmed hats in chief value of feathers or artificial flowers and in part of metal, and feather articles in part of metal, classified as feathers and artificial flowers under paragraph 425, tariff act of 1897, were held dutiable as manufactures in part of metal (par. 193), as claimed by the importers. United States *v.* Berlinger (167 Fed. Rep., 800; T. D. 29577) followed.

The board sustained a further claim that a trimmed fur hat classified as a manufacture of fur (par. 450) was dutiable as fur hats (par. 432).

The protest further related to silk ribbons classified as trimmings (par. 390) and held dutiable as manufactures of silk (par. 391), as claimed by the importers.

No. 27151.—Protests Abandoned.—Protests 431285, etc., of Bloomingdale Bros. et al., protests 513321, etc., of M. Doob, Sons & Co. et al., and protests 460061, etc., of Stroheim & Romann et al. (New York). Opinions by Howell, G. A.

Protests abandoned.

No. 27152.—Protests Overruled.—Protests 405977, etc., of F. M. Jabara & Bros. et al. (New York). Opinion by Cooper, G. A.

Protests overruled for want of merit.

Before Board 3, November 17, 1911.

No. 27153.—Protests Overruled.—Protests 513795, etc., of Fantini & Latorraca et al. (New York). Opinion by Waite, G. A.

Protests overruled for want of merit.

No. 27154.—Protests Overruled.—Protests 514585, etc., of Estabrook & Eaton et al., and protests 514713, etc., of S. S. Pierce Co. (Boston), protests 413152, etc., of Joseph Lazarus Co. et. al., and protests 513645, etc., of Henry Strauss et al. (Cincinnati), protests 430036, etc., of Bronze Powder Works Co., and protests 515852, etc., of R. F. Downing & Co. et al. (New York). Opinions by Hay, G. A.

Protests overruled for want of merit.

(T. D. 32021.)

Memorandum of decisions, Court of Customs Appeals.

[Omitted from this edition.]

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(T. D. 32022.)

Drawback on refined molasses.

Drawback on refined molasses manufactured by the Boston Molasses Co. from imported molasses.

TREASURY DEPARTMENT, *November 21, 1911.*

SIR: Drawback is hereby allowed under section 25 of the tariff act of August 5, 1909, and the regulations promulgated thereunder (T. D. 31695 of June 16, 1911), on refined molasses manufactured by the Boston Molasses Co. from imported molasses.

The allowance shall not exceed the quantity exported, there being no wastage. The claim shall be verified by reference to the analyses made on importation and analyses of samples of the exported product.

The manufacturers' sworn statement, dated November 6, 1911, is inclosed herewith for filing in your office.

Respectfully, JAMES F. CURTIS,
(63243.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Boston, Mass.*

(T. D. 32023.)

Drawback.

No allowance can be made where the merchandise is exported without inspection, unless notice of intent has been filed in accordance with article 4 of the regulations of June 16, 1911 (T. D. 31695).

TREASURY DEPARTMENT, *November 21, 1911.*

SIR: The department is in receipt of your letter of the 24th ultimo, relative to the allowance of drawback where there is no inspection and the notices of intent are filed less than six hours before lading.

Article 4 of the drawback regulations of June 16, 1911 (T. D. 31695), provides that at least six hours before lading a notice of intent to export shall be filed with the collector, and a copy of such notice shall be delivered to the customs inspector at the time the goods are deposited at the place of lading. Under article 6 inspecting officers are instructed to make returns based on steamship or transportation companies' records where they are unable to certify to actual inspection and lading, and it is provided that these certificates shall be accepted as sufficient evidence of lading and drawback allowed if timely notices of intent to export were filed in accordance with article 4.

Where there is no inspection the department will not authorize the payment of drawback on a return of the inspecting officer based on the records of the steamship or transportation lines unless either the

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notices are filed at the customhouse six hours before lading or the copy of the notice of intent is delivered to the inspector at the time the goods are deposited at the place of lading.

In the case referred to in your letter, where a portion of the merchandise was laden before the notices were filed at the customhouse and the remainder laden within three-quarters of an hour to three hours after the receipt by you of such notice, the department can not authorize the payment of the drawback.

Respectfully, JAMES F. CURTIS,
(91976.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Baltimore, Md.*

(T. D. 32024.)

Drawback on leather welting.

Drawback on leather welting manufactured by I. B. Williams & Sons, of Dover, N. H., with the use of imported rough leather.

TREASURY DEPARTMENT, *November 21, 1911.*

SIR: Drawback is hereby allowed, under section 25 of the tariff act of August 5, 1909, and the regulations promulgated thereunder (T. D. 31695 of June 16, 1911), on leather welting manufactured by I. B. Williams & Sons, of Dover, N. H., from imported rough leather.

A manufacturing record should be kept showing the quantity of leather welting manufactured, the quantity of worthless waste, the quantity of valuable waste, and the value thereof, the quantity of imported rough leather used, and the value of the imported rough leather. An abstract from this record should be filed with each entry.

The allowance shall not exceed the quantity of leather welting exported, plus an allowance for wastage depending upon the value of such waste.

The manufacturer's sworn statement, dated October 19, 1911, is transmitted herewith for filing in your office.

Respectfully, JAMES F. CURTIS,
(30853.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Boston, Mass.*

(T. D. 32025.)

Transmission or driving rope.

Appeal directed from decision of the Board of United States General Appraisers of October 16, 1911, G. A. 7286 (T. D. 31922), involving the classification of transmission or driving rope.

TREASURY DEPARTMENT, *November 22, 1911.*

SIR: I have to acknowledge the receipt of your letter of the 18th instant, inviting attention to the decision of the Board of United

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States General Appraisers of October 16, 1911, G. A. 7286 (T. D. 31922), involving the classification of certain merchandise described as "transmission" or "driving rope" and "patent interstranded cotton driving rope," which was held by the board to be properly dutiable as "belting for machinery" under paragraph 330 of the tariff act of August 5, 1909.

In view of the importance of the issue, you are hereby requested to file, in the name of the Secretary of the Treasury, an application with the United States Court of Customs Appeals for a review of the said decision, in accordance with the provisions of subsection 29 of section 28 of the tariff act of August 5, 1909.

Respectfully, JAMES F. CURTIS,
(74989.) *Assistant Secretary.*

Hon. WM. L. WEMPLE,
Assistant Attorney General, New York.

(T. D. 32026.)

Homing pigeons.

Homing pigeons, to be released for flight, dutiable as live poultry at the rate of 3 cents per pound under paragraph 289, tariff act of 1909, or free of duty under bond under paragraph 493 of the said act.

TREASURY DEPARTMENT, *November 21, 1911.*

SIR: The department is in receipt of your letter of August 31, 1911, reporting with reference to a communication from the Forest City Homing Club, London, Ontario, relative to the assessment of duty on certain homing pigeons shipped from Canada to be released in this country.

It appears from the communication mentioned that the birds have been shipped across the Canadian border at various times and that duty has been paid on the same birds each time imported.

You state that duty was assessed in this case in accordance with instructions contained in the department's letter of November 14, 1910, in which the opinion was expressed that pigeons are dutiable under paragraph 289 of the tariff act as poultry at the rate of 3 cents per pound if alive and 5 cents per pound if dead.

In reply, I have to advise you that the department is of the opinion that homing pigeons, imported into the United States to be released in this country for flight, are properly dutiable as live poultry at the rate of 3 cents per pound under paragraph 289 of the tariff act of 1909, and your action in assessing duty on the pigeons in question under the above-mentioned instructions is hereby approved.

If the importers, however, desire to enter such pigeons free of duty under bond, they may be permitted to do so under the provisions of paragraph 493 of the tariff act of 1909 and the regulations promul-

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gated thereunder relating to animals brought into the United States temporarily, for a period not exceeding six months, for the purpose of breeding, exhibition, or competition for prizes offered by any agricultural, polo, or racing association, the bond to be canceled on there being filed with the collector an affidavit, signed by the secretary or other officer of the club, or other evidence satisfactory to the collector, that the birds have actually been released and returned to Canada.

Respectfully, JAMES F. CURTIS,
(82249.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *Detroit, Mich.*

(T. D. 32027.)

Treatment of horsehair in transit from South America through the United States to a foreign country.

TREASURY DEPARTMENT, *November 23, 1911.*

To officers of customs and others concerned:

Referring to T. D. 30783 of July 13, 1910, relative to reporting the arrival of certain articles from South America likely to carry the infection of the foot-and-mouth disease, I have to inform you that the Secretary of Agriculture advises the department as follows:

This department is of the opinion that horsehair from South America which is to be shipped by rail through a portion of this country, although destined to Canada, should be subjected to the same requirements as such hair intended for consumption in the United States, and unless the hair be accompanied by a certificate giving the markings on the bales, the date and number of the invoice, and showing that it originated in a district where no foot-and-mouth disease existed at the time of shipment or during six months immediately preceding and that it had not been exposed to the infection of foot-and-mouth disease, such certificate being signed by the American consul at the port of shipment, the bales of hair should be subjected to disinfection under the supervision of the inspector of the Bureau of Animal Industry at the port of entry, who should also require from the owner a statement to the effect that the hair would proceed direct to destination and that none of the bales would be opened within the territory of the United States.

You will be governed accordingly.

JAMES F. CURTIS, *Assistant Secretary.*

(T. D. 32028.)

Leather gloves, embroidered.

Appeal directed from the decision of the Board of United States General Appraisers of October 3, 1911, G. A. 7282 (T. D. 31908), involving the classification of leather gloves.

TREASURY DEPARTMENT, *November 25, 1911.*

SIR: The department is in receipt of your letter of November 22, 1911, inviting attention to the decision of the Board of United States

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General Appraisers of October 3, 1911, G. A. 7282 (T. D. 31908), involving the classification of certain leather gloves which were assessed with duty at the cumulative rate provided by paragraph 445 of the tariff act for gloves stitched or embroidered with more than three single strands or cords.

In view of the importance of the issue, you are hereby requested to file, in the name of the Secretary of the Treasury, an application with the United States Court of Customs Appeals for a review of so much of the said decision as held that the gloves represented by Exhibit 1 were not stitched or embroidered within the meaning of said paragraph 445, in accordance with the provisions of subsection 29 of section 28 of the said tariff act of 1909.

Respectfully, JAMES F. CURTIS,
(54390.) *Assistant Secretary.*

Hon. WM. L. WEMPLE,
Assistant Attorney General, New York.

(T. D. 32029.)

Disposition at ports of cases arising under the food and drugs act of June 30, 1906.

TREASURY DEPARTMENT, *November 25, 1911.*

To collectors of customs at ports where laboratories of the Department of Agriculture are established:

Precedents arising under the food and drugs act of June 30, 1906, additional to those published in T. D. 29368, T. D. 29508, T. D. 30080, T. D. 31038, T. D. 31049, and T. D. 31399, of December 1, 1908, February 2, 1909, November 1, 1909, November 12, 1910, November 19, 1910, and March 20, 1911, respectively, have been established in the following cases:

1. Products in violation of the laws of the country of production and exportation—violation of section 11.

2. That cocoa containing added mineral matter as the result of treatment with alkali or alkaline salts in the course of manufacture shall be held to be adulterated and misbranded unless the label of such cocoa bears the statement to the effect that the cocoa contains added mineral ingredients, stating the amount.

Further, that if such cocoa is designated as soluble cocoa, it is misbranded, as such cocoa is no more soluble than ordinary cocoa. Cocoa prepared by the use of alkali or alkaline salts, and containing free alkali in the finished product shall be held as adulterated and deleterious to health.

JAMES F. CURTIS, *Assistant Secretary.*

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(T. D. 32030—G. A. 7302.)

Marmite.

MARMITE—EXTRACT OF MEAT—SIMILITUDE.

Marmite, a commodity of vegetable origin produced from yeast, is not similar in use to extract of meat, but is dutiable under paragraph 480, tariff act of 1909, as an unenumerated manufactured article.

United States General Appraisers, New York, November 24, 1911.

In the matter of protests 511661, etc., of Millenium Food Co. against the assessment of duty by the collector of customs at the port of Boston.

Before Board 3 (WAITE, SOMERVILLE, and HAY, General Appraisers; HAY, G. A., absent).

WAITE, *General Appraiser:* The commodity in question here was before the board for consideration in the case of Millenium Food Co., Abstract 26382 (T. D. 31832), where it was claimed to be dutiable as a manufactured article under paragraph 480, tariff act of 1909. It was held in that case that the proof did not warrant finding it to be such, by reason of the fact that it was stated to be produced by a secret process and no evidence was given as to the method of manufacture. In this case the same claim is made.

The commodity is known as "marmite." It is a food product manufactured from yeast, which, according to the testimony, is obtained from breweries. The process of manufacture is quite elaborate, and is accomplished by means of expensive machinery especially adapted to the purpose. The claim of the Government is that this commodity is dutiable under paragraphs 287 and 481 by similitude to extract of meat, as it has been assessed. If not dutiable by similitude, we think it should, without doubt, be dutiable as a manufactured article. The only question, then, for us to decide is whether it is so far similar in its use to extract of beef as to be assessed with the same duty. We can not see that it is similar in the other respects of material, quality, or texture mentioned in paragraph 481.

The testimony shows that "marmite" is used in making goulashes, consommé, and for various flavoring purposes by that class of people usually known as vegetarians, and, by reason of its vegetable origin, is used in preference to commodities like extract of beef, such people being opposed to the use of foods of an animal nature.

The courts, in passing upon the question of similitude as respects similarity in the uses of articles, have stated that such similarity refers to the employment or mode of use or its effect in producing results. Murphy *v.* Arnson (96 U. S., 132); Pickhardt *v.* Merritt (132 U. S., 252, 258). In other words, two articles are not similar in use within the meaning of the statute, because both may be used for food purposes, any more than all medicinal preparations may be said to be similar to one another because they are used for medicine. While

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beneficial results are sought to be obtained from the use of extract of beef and of the commodity here in question, it is not shown, neither do we think it can be said, that they are claimed to be similar in their effect upon the system or in the results which they produce. It is reasonable to assume that the result produced by the use of extract of beef is entirely different from that sought by the users of "marmite," and apparently the reason for avoiding one would lead to the use of the other. Hence we do not think any similarity which may exist between the two is such similarity as is provided for in the statute. As above stated, we are satisfied that marmite is a manufactured article and should be assessed as such. The protests are therefore sustained as to the claim that it should be dutiable at 20 per cent ad valorem under paragraph 480, and the collector is instructed to reliquidate accordingly.

(T. D. 32031)

Abstracts of decisions of the Board of General Appraisers.

Board 1.—Sharretts, McClelland, and Chamberlain. *Board 2.*—Fischer, Howell, and Cooper. *Board 3.*—Waite, Somerville, and Hay.

BEFORE BOARD 2, NOVEMBER 20, 1911.

No. 27155.—CYLINDRICAL METAL CONTAINERS.—Protests 400578, etc., of William H. Masson et al. (Baltimore), protests 517690, etc., of Harshaw, Fuller & Goodwin Co. et al. (Cleveland), protests 457845–3647, etc., of Philip Rahm et al. (New Orleans), and protests 431926, etc., of S. Melon & Co. et al. (San Juan). Opinions by Fischer, G. A.

Protests sustained as to cylindrical metal containers of carbolic-acid crystals, cod-liver oil, caustic potash, oil of lemon, oil of bergamot, chloride of zinc, bleaching powder, chloride of magnesium, cement, white zinc paint, and linseed oil. United States *v.* Garramone (T. D. 31577), United States *v.* Braun (T. D. 31596), Abstract 26595 (T. D. 31866), and Abstract 26233 (T. D. 31804) followed.

No. 27156.—SEWING MACHINES.—Protest 516295–38607 of International Forwarding Co. (Chicago), and protest 479252 of A. H. Ringk & Co., and protests 481026, etc., of Singer Manufacturing Co. (New York). Opinions by Fischer, G. A.

Machines for sewing shoes and leather gloves and for closing the mouths of filled sacks or bags, which were classified as manufactures of metal under paragraph 199, tariff act of 1909, were held dutiable as sewing machines (par. 197). Protests sustained on the authority of G. A. 7225 (T. D. 31623).

No. 27157.—SUPERCALENDERED AND EMBOSSED GREASE-PROOF PAPER.—Protests 503877, etc., of Pritchard, Verkuzen & Co. (New York). Opinion by Fischer G. A.

Protests sustained as to supercalendered and embossed grease-proof paper. G. A. 7136 (T. D. 31133) followed.

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No. 27158.—Decalcomanias.—Protests 346295, etc., of Palm Bros. Co. et al., and protest 327386 of George D. Barnard & Co. (St. Louis). Opinions by Fischer, G. A.

Decalcomanias classified as printed surface-coated paper under paragraph 398, tariff act of 1897, or as printed matter (par. 403), were held dutiable as lithographic prints (par. 400). Protests sustained on the authority of United States *v.* Borgfeldt (T. D. 31945).

No. 27159.—Rough-Trimmed Mica.—Protests 509759, etc., of A. O. Schoomaker et al. (New York). Opinion by Fischer, G. A.

Protests sustained as to rough-trimmed mica. United States *v.* Myers (1 Ct. Cust. Appls., 257; T. D. 31301) followed.

No. 27160.—Lithographic Prints—View Cards.—Protest 418759 of S. Longsdorf & Co. (New York). Opinion by Fischer, G. A.

Cards printed with views of American scenes and classified as lithographic prints under paragraph 412, tariff act of 1909, were held dutiable as lithographic prints under paragraph 400, act of 1897, by reason of the proviso to paragraph 416, act of 1909. Protest sustained.

No. 27161.—Protests Overruled.—Protests 473817, etc., of Chelsea Fibre Mills et al., and protests 448409, etc., of Knauth, Nachod & Kuhne (New York), and protests 459294, etc., of Pittsburgh Press et al. (Pittsburgh). Opinions by Fischer, G. A.

Protests overruled for want of merit.

No. 27162.—Gray Schappe Silk Yarn.—Protest 450447 of J. Bourdis & Co. (New York). Opinion by Howell, G. A.

Protests sustained as to gray schappe silk yarn. United States *v.* Bouchsein (T. D. 31954) followed.

No. 27163.—Protests Overruled.—Protest 439491-34036 of Hitomi & Co. (Chicago), and protests 422998, etc., of J. Breidbart et al., protests 494911, etc., of Hunken, Neale & Forbes, protests 411817, etc., of Knauth, Nachod & Kuhne, protests 485607, etc., of Snow's United States Sample Express Co., protests 457629, etc., of William H. Stiner & Son et al., and protests 513159, etc., of Voss & Stern et al. (New York). Opinions by Howell, G. A.

Protests overruled for want of merit.

Before Board 3, November 20, 1911.

No. 27164.—Protests Overruled.—Protest 455398 of Madeira Embroidery Co. (New York), and protests 511675, etc., of R. B. Anderson & Co. et al., and protests 520915, etc., of Tom Hong Co. et al. (Port Townsend). Opinions by Waite, G. A.

Protests overruled for want of merit.

No. 27165.—Granito.—Protests 513410, etc., of C. D. Jackson & Co. et al. (New York). Opinion by Hay, G. A.

Protests sustained as to granito. Rossman *v.* United States (1 Ct. Cust. Appls., 280; T. D. 31321) followed.

No. 27166.—Protests Overruled.—Protest 505448-37879 of G. W. Sheldon & Co. (Chicago), protest 518843 of F. B. Vandegrift & Co. (New York), and protests 522318, etc., of John H. Boden & Co. (San Francisco). Opinions by Hay, G. A.

Protests overruled for want of merit.

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BEFORE BOARD 1, NOVEMBER 21, 1911.

No. 27167.—SHELL CAMEOS—ONYX CAMEOS.—Protest 367481 of Borrelli & Vitelli (New York). Opinion by Chamberlain, G. A.

Shell cameos and onyx cameos classified under paragraphs 450 and 115, tariff act of 1897, as manufactures of shell and onyx, respectively, were claimed to be dutiable as precious stones cut but not set (par. 435). Protest sustained. G. A. 6936 (T. D. 30068) and G. A. 6932 (T. D. 29997) followed.

No. 27168.—IMITATION JET.—Protests 473510, etc., and 478661 of A. Lorsch & Co. (New York). Opinions by Chamberlain, G. A.

Protests sustained as to imitation jet articles United States *v.* Beierle (1 Ct. Cust. Appls., 457; T. D. 31506) followed.

No. 27169.—SCOURING MACHINE—WOOL TOPS—ENTIRETY.—Protest 483734 of Samuel Pearson (Portland, Oreg.).

Wool tops imported with a scouring machine were claimed to be a material part of said machine, to be used solely for covering the top rollers thereof, and therefore to be dutiable with the machine as an entirety under paragraph 199, tariff act of 1909, as manufactures of metal rather than as wool tops (par. 375), as classified.

CHAMBERLAIN, *General Appraiser:* * * * The testimony is to the effect that the wool in question can be used for ladies' dress goods; that it is not necessary to use this class of wool to cover the rollers; that rubber will produce the same result if substituted in place of wool. It is further shown that a greater amount of wool than is actually necessary to be used on the rollers was imported with the machine. It is, therefore, clear that the wool is not an essential part of the machine which it accompanies and can not therefore be considered with the machine as being an entirety. Note Abstract 25775 (T. D. 31675). The protest is overruled.

No. 27170.—CYANIDE OF POTASSIUM—CHEMICAL MIXTURE.—Protest 478699 of National Aniline & Chemical Co. (New York). Opinion by Chamberlain, G. A.

Protest sustained as to cyanide of potassium on the authority of Abstract 23365 (T. D. 30645).

No. 27171.—EMBROIDERED WOOLEN BLANKETS.—Protest 503215 of E. W. Shields (Kansas City).

Embroidered woolen blankets classified as embroidered articles under paragraph 383, tariff act of 1909, were claimed to be dutiable as "blankets" (par. 379).

CHAMBERLAIN, *General Appraiser:* * * * The only question raised is, Which of the two provisions is the more specific, the provision for "articles embroidered by hand or machinery" or that for "blankets"? In our opinion the provision for "blankets * * * composed wholly or in part of wool" is more specific than that for "articles embroidered by hand or machinery * * * made of wool or of which wool is a component material." See G. A. 4890 (T. D. 22893) and cases therein cited, and Thomas *v.* Wanamaker (129 Fed. Rep., 92; T. D. 25155). The protest is sustained. * * *

No. 27172.—KIPPERED HERRING.—Protests 427348, etc., of H. B. Ritchie (Eastport), protest 441274 of A. M. Compton (Portland, Oreg.), and protests 496002, etc., of American Express Co. et al. (St. Louis). Opinions by Chamberlain, G. A.

Protests sustained as to kippered herring on the authority of United States *v.* Rosenstein (1 Ct. Cust. Appls., 304; T. D. 31357).

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No. 27173.—Fish in Tins.—Protest 519816 of P. Pastene & Co. (Boston). Opinion by Chamberlain, G. A.

Tunny fish in tins was held dutiable as fish in tins of 7½ cubic inches or less under paragraph 270, tariff act of 1909, rather than as fish in tins of more than 7½ cubic inches under the same paragraph. Protest sustained.

No. 27174.—Chemical Compound—Magnesia.—Protest 511756 of A. Klipstein & Co. (New York). Opinion by Chamberlain, G. A.

A commodity invoiced as "oxide of magnesia" and classified as magnesia, calcined, medicinal, under paragraph 31, tariff act of 1909, was claimed to be dutiable as a chemical compound (par. 3). Protest sustained.

No. 27175.—Protests Overruled.—Protest 506317 of T. J. Woodside (El Paso), protests 510656, etc., of Powers-Weightman-Rosengarten Co. et al. (Philadelphia), protest 488661 of W. White (Port Huron), protest 489794 of Deutsch Bros. (St. Joseph), and protest 499382 of American Express Co., and protest 360869 of Mallinckrodt Chemical Works (St. Louis). Opinions by Chamberlain, G. A.

Protests overruled for want of merit.

Before Board 2, November 21, 1911.

No. 27176.—Steel Shafts—Forgings.—Protests 201843, etc., of Hewitt Motor Co. et al. (New York). Opinion by Fischer, G. A.

Forged steel shafts subsequently rough trimmed in a lathe were held dutiable as forgings under paragraph 127, tariff act of 1897, rather than as manufactures of metal (par. 193). Protests sustained. Prosser *v.* United States (1 Ct. Cust. Appls., 550; T. D. 31551) followed.

No. 27177.—Post Cards—Lithographic Prints—Printed Matter.—Protests 514277, etc., of J. Bonton & Co. et al. (New York). Opinion by Fischer, G. A.

Protests sustained as to pictorial post cards on the authority of Ringk *v.* United States (164 Fed. Rep., 1021; T. D. 29037), United States *v.* Deutsch (178 Fed. Rep., 272; T. D. 30387), Rotograph Co. *v.* United States (1 Ct. Cust. Appls., 82; T. D. 31106), and Abstract 24233 (T. D. 31070) followed.

No. 27178.—Cylindrical Metal Containers.—Protests 525657, etc., of Andrew Baxter et al. (New York). Opinion by Fischer, G. A.

Protests sustained as to cylindrical metal containers. Abstract 26485 (T. D. 31851) followed.

No. 27179.—Book-Sewing Machine.—Protest 425961 of American Type Founders' Co. (San Francisco).

A book-sewing machine classified as a manufacture of metal under paragraph 199, tariff act of 1909, was held dutiable as a sewing machine (par. 197). Protest sustained.

Fischer, *General Appraiser:* * * * We find from the proof offered that the machine sews the leaves of the signatures together preparatory to binding. It is a thread book-sewing machine, and sews with the use of a needle and hook forming a chain stitch. The machine falls within the ruling of the board in G. A. 7225 (T. D. 31623), and we are of the opinion that it may fairly be regarded as a sewing machine. * * *

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No. 27180.—Supercalendered and Embossed Grease-Proof Paper.—Protests 506296–37849 of C. D. Stone & Co (Chicago). Opinion by Fisher, G. A.

Protests sustained as to supercalendered and embossed grease-proof paper. G. A. 7136 (T. D. 31133) followed.

No. 27181.—Protests Overruled.—Protests 504043, etc., of Altoona Zinc Works et al., and protest 431471 of Lanyon Zinc Co. (Kansas City), protest 247392 of Peter A. Frasse & Co., and protests 298713, etc., of A. H. Ringk & Co. et al (New York), and protest 518890 of E. I. Dupont Powder Co. (Wilmington). Opinions by Fischer, G. A.

Protests overruled for want of merit.

No. 27182.—Protests Overruled.—Protests 471252, etc., of Louis A. Consmiller, and protests 417913, etc., of Pratt & Farmer Co. et al. (New York). Opinions by Howell, G. A.

Protests overruled for want of merit.

No. 27183.—Protests Overruled.—Protests 436374, etc., of John Darling & Co. et al., and protests 107463, etc., of I. A. Lahey & Sons et al. (New York). Opinions by Cooper, G. A.

Protests overruled for want of merit.

Before Board 3, November 21, 1911.

No. 27184.—Hyacinth Bulbs.—Protests 394283, etc., of Covington Seed Co. et al. (Cincinnati). Opinion by Waite, G. A.

Protests sustained as to hyacinth bulbs. Note Breck *v.* United States (T. D. 31576).

No. 27185.—Spanish Pimiento—Red Pepper.—Protest 574038 of Woolson Spice Co. (Toledo).

Waite, *General Appraiser:* The commodity in question here is a ground red pepper, being invoiced as "Spanish pimenton." It is known as the Spanish pepper or pimiento. The term is sometimes confused with pimento, which is allspice. See G. A. 6667 (T. D. 28427). We think this merchandise is dutiable under the provision in paragraph 298, tariff act of 1909, for "capsicum or red pepper" at 2½ cents per pound. It is true it is different from our red pepper which belongs to the same family, being milder and less pungent to the taste.

The protest is sustained, the assessment of the merchandise as a spice under paragraph 298 being reversed.

No. 27186.—Protests Overruled.—Protest 515824–3170 of George Borgfeldt & Co. (New Orleans), protest 516430 of Amerman & Patterson, and protests 506589, etc., of Sun Kwong On et al. (New York), protests 507158, etc., of Bow Tsee Tong & Co. et al., and protests 491733, etc., of Kwong Wo Tai & Co. (San Francisco). Opinions by Waite, G. A.

Protests overruled for want of merit.

No. 27187.—Powdered Talc.—Protests 434154, etc., of Knauth, Nachod & Kuhne et al. (New York). Opinion by Hay, G. A.

Protests sustained as to powdered talc. Salomon *v.* United States (T. D. 31635) followed.

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No. 27188.—Straw Bottle Covers.—Protests 442560, etc., of William H. Masson et al. (Baltimore). Opinion by Hay, G. A.

The board held certain straw covers for bottles free of duty as the usual covers of merchandise subject to specific duty, as claimed, rather than as manufactures of straw (par. 463), as assessed. G. A. 3836 (T. D. 17961) followed.

No. 27189.—Protests Overruled.—Protest 515793 of George Siell (Detroit), and protests 418842, etc., of Morris European & American Express Co. (New York). Opinions by Hay, G. A.

Protests overruled for want of merit.

Before Board 1, November 24, 1911.

No. 27190.—Willow Baskets—Straw Baskets.—Protests 406816, etc., of H. Bayersdorfer & Co. (Philadelphia). Opinion by McClelland, G. A.

Willow baskets and straw baskets were held dutiable as baskets of wood or straw under paragraph 214, tariff act of 1909, as claimed by the importers. Thomsen *v.* United States (T. D. 31590) and Brody *v.* United States (T. D. 31573) followed.

No. 27191.—Protests Overruled.—Protests 523931, etc., of Paul Masson (Baltimore), and protest 578123 of F. C. Walter (New York). Opinions by McClelland, G. A.

Protests overruled for want of merit.

Before Board 2, November 24, 1911.

No. 27192.—Decalcomanias.—Protests 311422, etc., of Pam Letter Co. et al. (Cincinnati), and protests 342973, etc., of Henry Bischoff & Co. et al. (New York). Opinions by Fischer, G. A.

Decalcomanias classified as printed surface-coated paper under paragraph 398, tariff act of 1897, were held dutiable as lithographic prints (par. 400). Protests sustained on the authority of United States *v.* Borgfeldt (T. D. 31945).

No.—27193.—Cylindrical Metal Containers.—Protests 470584, etc., of John A. Conkey & Co. et al. (Boston), and protests 408107, etc., of O. G. Hempstead & Son et al. (Philadelphia). Opinions by Fischer, G. A.

Protests sustained as to cylindrical metal containers of carbolic-acid crystals, sulphide of sodium, caustic soda, red arsenic, caustic potash, bleaching powder, chloride of zinc, and permanganate of potash. United States *v.* Garramone (T. D. 31577), United States *v.* Braun (T. D. 31596), Abstract 26485 (T. D. 31851), and Abstract 26595 (T. D. 31866) followed.

No. 27194.—Clip Plates—Forgings—Steel Ties—Railway Bars.—Protests 488857, etc., of E. Wiener Co. (New York).

Steel clip plates used to connect steel rails with steel ties and classified as manufactures of metal under paragraph 199, tariff act of 1909, were claimed to be dutiable as forgings (par. 123). Protest 488858 sustained.

A further claim was made that steel ties were dutiable as railway bars (par. 126) rather than as manufactures of metal (par. 199), as classified.

Fischer, *General Appraiser:* * * * The only other question in the case is as to whether the steel ties are classifiable as railway bars. As we view the record the importer has failed to prove a commercial designation for the ties as "railway bars,"

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and the proof on the whole fails to support that claim. We do not believe that the articles are "railway bars" within the commonly accepted meaning of that term, and hold the steel ties dutiable properly as assessed.

No. 27195.—Millboards—Pulpboards—Cardboard.—Protests 436256, etc., of Pantasote Co. (New York).

Fischer, *General Appraiser:* The merchandise is described on the invoices as "millboards." Duty was assessed at 35 per cent ad valorem, under the provisions of paragraph 415, tariff act of 1909, as cardboard. The appraiser's return, as originally made, subjected the flat rectangular sheets or boards to duty at 30 per cent ad valorem under paragraph 415 as paper not specially provided for, and similar boards bent or curved to a concave form to duty at 35 per cent ad valorem under paragraph 420 or 433 as manufactures of paper or as manufactures of pulp, respectively. The appraiser of the port of New York, in his special reports which accompany the record in these cases, states that his return in each instance was in error and that he should have returned said millboards at the rate of 35 per cent ad valorem under paragraph 415 as cardboard.

The importer claims that the merchandise is dutiable properly under paragraph 415 at 25 per cent ad valorem as paper hangings or at 30 per cent ad valorem as paper not specially provided for.

The question of the dutiable character of certain articles similar in general character to these now before us arose under the act of 1897 and was the subject of this board's ruling in Abstract 22034 (T. D. 30086). In that case the board held that the flat boards were dutiable as paper not specially provided for and the curved forms as manufactures of pulp. Upon appeal to the United States Court of Customs Appeals the decision of the board was affirmed. Pantasote Co. *v.* United States (1 Ct. Cust. Appls., 47; T. D. 31008).

These cases arise under the new act, wherein appears for the first time a provision for "cardboard." As under the former act no separate provision was made in the law for paper boards (cardboard), as distinguished from the more flexible product of the paper machine, the board held the heavy sheets or boards classifiable as "paper" and the boards curved or bent to form classifiable as manufactures of "pulp" or as manufactures of "paper." Now, however, the conditions are different. There is no agreement that the articles are paper in any form, and while the importer claims that it is paper "not specially provided for" we are satisfied that the proof offered as to the manufacture of the article suggests at least that it belongs to the class of manufactures from pulp known as "cardboard." Certainly there is nothing in the proof that the merchandise is always dealt in as "millboards" to conflict with the Government's position that the general term "cardboard" covers the various flat paper boards known to commerce as paper. Loewenthal case (T. D. 31592). The term cardboard "is the generic name for paper boards," and we are not disposed to hold on the record as presented in these cases that there should be an exception made as to any particular kind of paper board. The issue, so far as it relates to the varying classifications, manufactures of paper (paragraph 420), manufactures of pulp (paragraph 447), and cardboard (paragraph 415), is of no real importance, the rate being the same in each instance. We are satisfied that the importer has not made out a case, and we accordingly overrule the protests. The decision of the court in the Meyerson case (T. D. 31953) may be here noted. The decision of the collector in each case is affirmed.

No. 27196.—Lithographed Booklets.—Protest 503799 of Kronfeld, Saunders & Co. (New York). Opinion by Fischer, G. A.

Booklets classified as "booklets, decorated in whole or in part by hand or by spraying, whether or not lithographed" under paragraph 412, tariff act of 1909, were held dutiable as "booklets" under the same paragraph, as claimed by the importers.

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No. 27197.—Protests Overruled.—Protests 513218, etc., of Jordan-Marsh Co et al. (Boston), protests 514163, etc., of Consolidated Kansas City Smelting & Refining Co. (El Paso), protests 513731, etc., of G. Ceribelli & Co., protest 504122 of I. Gattegno & Co., protests 489911, etc., of Holzopfels American Composition Co., and protests 516149, etc., of F. G. Sternberg (New York), protest 513270 of American Smelting & Refining Co. (Perth Amboy), and protests 376094, etc., of A. Murphy & Co., and protests 460239, etc., of Charles Beck Co. et al. (Philadelphia). Opinions by Fischer, G. A.

Protests overruled for want of merit.

No. 27198.—Protests Overruled.—Protests 415432, etc., of Guthman, Solomons & Co. et al., and protests 516115, etc., of Oliver & Co. et al. (New York). Opinions by Howell, G. A.

Protests overruled for want of merit.

No. 27199.—Drawnwork—Scalloped Articles.—Protests 223293, etc., of C. B. Richard & Co., and protest 398973 of John Wanamaker (New York), and protests 212393, etc., of Strawbridge & Clothier (Philadelphia). Opinions by Cooper, G. A.

Protests sustained as to drawnwork and scalloped articles on the authority of G. A. 6993 (T. D. 30442) and G. A. 6966 (T. D. 30271).

No. 27200.—Waterproof Cloth—Filtering Cloth.—Protests 484607, etc., of Henry Bischoff & Co. (New York).

Cooper, *General Appraiser:* The merchandise covered by these protests was classified as cotton waterproof cloth and duty collected thereon at the rate of 10 cents per square yard and 20 per cent ad valorem under paragraph 347, tariff act of 1909. It is claimed to be dutiable as cotton cloth under paragraph 315 of said act.

The testimony in behalf of the importers shows that the cloth is used solely for the purpose of filtering the clay composition used in the manufacture of chinaware and similar articles—that is, the composition is put in this cloth and water drained off. The testimony in behalf of the Government shows that the cloth has been treated with salts of copper and waxy material, which treatment has slightly swelled the cotton fibers and has a tendency to make the fabric water repellant.

The official sample shows the cloth to be coarse and brightly colored, counting between 50 and 100 threads per square inch. It differs materially from the waterproof cloth, which has been the subject of previous decisions of this board and the courts. G. A. 1382 (T. D. 12733); United States *v.* Brown (136 Fed. Rep., 550; T. D. 26124); Abstract 25485 (T. D. 31568). While the cloth will repel or resist the penetration of water to some degree, it is not "absolutely impervious to water or nearly so." It does not serve any of the purposes of a waterproof cloth, but is, in fact, a filtering cloth.

The protests are sustained.

No. 27201.—Protests Overruled.—Protests 471846–35666, etc., of Carson, Pirie, Scott & Co. et al. (Chicago). Opinions by Cooper, G. A.

Protests overruled for want of merit.

Before Board 3, November 24, 1911.

No. 27202.—Hyacinth Bulbs.—Protests 408960, etc., of Weeber & Don et al. (New York), and protests 491664, etc., of O. G. Hempstead & Son (Philadelphia). Opinions by Waite, G. A.

Protests sustained as to hyacinth bulbs. Breck *v.* United States (T. D. 31576) followed.

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No. 27203.—Carbonated Pineapple Juice—Nonalcoholic Beverage—Fruit Juice.—Protest 488233 of Cuba Fruit Juice Co. (Key West).

Waite, *General Appraiser:* The commodity in question is invoiced as "pineapple juice." It is put up in bottles and packed in barrels. It was assessed under paragraph 310, tariff act of 1909, as a fruit juice, and is claimed by the importers to be dutiable under paragraph 311, which provides for "ginger ale, ginger beer, lemonade, soda water, and other similar beverages containing no alcohol," at varying rates per dozen bottles, depending on the quantity contained therein.

According to the analyst, there is no alcohol in this commodity. It appears to be carbonated water, flavored with pineapple juice. Upon inspection of the sample it is apparent that it may be used as a beverage in the condition in which it arrives. It apparently has had some sugar added to it to make it more palatable; but we think it does not contain enough of the pineapple juice (reported to be about one-fifth of the whole commodity) to make it assessable as a fruit juice, taken in connection with the fact that it may be used as a beverage in the condition imported. Paragraph 311 provides for ginger ale, lemonade, etc. The fact that lemonade was made with one-fifth lemon juice we do not think would warrant a finding that it was the juice of the lemon. Hence we think the merchandise in question is more accurately described as a beverage similar to ginger beer, soda water, etc., as enumerated in paragraph 311. The protest is therefore sustained and assessment will be made at the proper rate under paragraph 311, having regard to the capacity of the bottles.

No. 27204.—Desiccated Potatoes.—Protests 523034, etc., of W. Grandeman & Son et. al. (New York). Opinions by Waite, G. A.

Protests sustained as to desiccated potatoes on the authority of Abstract 23912 (T. D. 30901).

No. 27205.—Protests Overruled.—Protests 496117, etc., of L. Bergonzi & Co. et al. (New York), and protest 501342 of Yick Sang Tong & Co. (San Francisco). Opinions by Waite, G. A.

Protests overruled for want of merit.

No. 27206.—Agate Collar Buttons.—Protest 463132 of R. F. Downing & Co. (New York). Opinion by Somerville, G. A.

Protests sustained as to agate collar buttons. G. A. 7087 (T. D. 30877) followed.

No. 27207.—Protests Overruled.—Protests 435932, etc., of Castle, Gottheil & Overton et al. (Boston), protests 496865, etc., of M. T. Elliott & Co. et al., and protests 500039, etc., of Scandinavian American Trading Co. et al. (New York), protest 515806 of F. B. Vandegrift & Co. (Philadelphia), and protest 511119 of W. J. Walker (Savannah). Opinions by Somerville, G. A.

Protests overruled for want of merit.

No. 27208.—Protests Abandoned.—Protests 447078, etc., of Reed Bros. & Co. (Cleveland), protest 458781 of Corl, Knott & Co. (Grand Rapids), protests 509953, etc., of Liebstadter Millinery Co. (Kansas City), protest 395692 of J. M. Robinson Norton Co. (Louisville), protests 500819, etc., of W. V. Snyder & Co. (Newark), protest 485177 of M. Furuya & Co. (Port Townsend), protests 435953, etc., of Taylor Instrument Co. (Rochester), and protests 435972 of Mattoon & Co. (San Francisco).

Protests abandoned.

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(T. D. 32032.)

Olive oil.

SHELDON & CO. *v.* UNITED STATES (No. 138). CUSIMANO *v.* UNITED STATES (No. 139). KLIPSTEIN & CO. *v.* UNITED STATES (No. 140). KRAEMER & FOSTER *v.* UNITED STATES (No. 141).

OLIVE OIL FOR MANUFACTURING OR MECHANICAL PURPOSES.

The result of chemical tests as here shown is inconclusive, and in view of the greater number and experience of the witnesses for the importers as to the appearance, taste, and smell of the oils, and further in view of the fact that the oils here were actually imported and sold as mechanical oils and for use as mechanical oils, the importation must be deemed olive oil for manufacturing or mechanical purposes, worth not more than 60 cents per gallon, and as such it was free of duty under paragraph 626, tariff act of 1897.—Holbrook *v.* United States (1 Ct. Cust. Appls., 263; T. D. 31317.)

United States Court of Customs Appeals, November 22, 1911.

TRANSFERRED from United States Circuit Court for Southern District of New York, Abstract 21336 (T. D. 29790).

[Decision reversed.]

Brown & Gerry for appellants.

William L. Wemple, Assistant Attorney General (*Charles E. McNabb* on the brief), for the United States.

Before MONTGOMERY, SMITH, BARBER, and MARTIN, Judges.

MARTIN, Judge, delivered the opinion of the court:

The merchandise involved in these cases is olive oil, which was imported in various shipments to this country from Greece, Sicily, and Turkey under the tariff act of 1897. Paragraph 40 of that act laid a duty of 40 cents a gallon upon olive oil not specially provided for. Paragraph 626 of the same act allowed free entry to olive oil for manufacturing or mechanical purposes, fit only for such use and valued at not more than 60 cents per gallon. The collector classified the importations now before the court under the paragraph first above named, and assessed duty upon them at the rate therein provided. The importers severally protested against this ruling, and contended that the importations fell within the second paragraph above stated, and were therefore entitled to entry free of duty.

It is conceded that the importations are olive oil; that the oil was valued at not more than 60 cents per gallon; that if the oil was for manufacturing or mechanical purposes and fit only for such use, it was free of duty; and that unless it was for manufacturing or mechanical purposes and fit only for such use, it was dutiable at 40 cents per gallon as assessed by the collector. The sole question, therefore, is whether or not the olive oil composing these importations was for manufacturing or mechanical purposes and fit only for such use.

It appears from the testimony that olive oils are used either for food or for manufacturing purposes. The latter class is generally called commercial or mechanical oil. The mechanical oil is used in making soaps and in other industries. The edible oil is manufactured with great care from the best fruit, whereas the mechanical oil is pressed from inferior or decayed olives, with little care for cleanliness,

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or is sometimes pressed from better olives after all the edible oil has been extracted from them. The edible oil is carefully handled and packed, whereas the mechanical oil is often handled locally in vessels of goatskin and is often transported in secondhand petroleum barrels. If the edible oil becomes so rancid as to be unfit for food, it may nevertheless be fit for mechanical use. However, all such mechanical oil is not simply rancid edible oil, for much of it is given the lower rating because it is naturally not bland and smooth, but possesses a rank and acrid taste and an unpleasant odor even when fresh. The olives grown in some districts are recognized as unfit for the production of edible oil, and the trade in such case ranks all the oil so produced there as mechanical oil. The class to which any given oil belongs is ascertained from its appearance, its taste, and smell. These proofs are also aided to some extent by chemical tests, but such tests are not conclusive. If such a test shows a high proportion of free fatty acid in the oil, it tends to show that the oil is not edible; if the free fatty acid is slight, it is more probable that the oil is edible. On the other hand, sometimes an oil is found with a relatively large measure of free fatty acid and is nevertheless undoubtedly edible; while, conversely, there are oils with little such acid that are palpably unfit for food. There are different grades both of edible and mechanical oils, and sometimes the better grades of the inferior oil approach very near in quality to the inferior grades of the better oil. Yet even in such cases experts are capable of distinguishing between the two by sight, taste, and smell, aided by a knowledge of the province from which the oil comes; and witnesses say that there is rarely less than a difference of 20 cents a gallon in the price of inferior edible oils and superior mechanical oils.

The oils involved in this case, so far as appears, were packed in inferior barrels, being secondhand petroleum barrels, such as would not be used for edible oil. They were in fact bought, sold, and used as and for mechanical oil and that alone. The prices paid for the oil are consistent with this statement. Their value, as first above stated, also fell within the limit fixed by the paragraph as the maximum value of mechanical oil. In addition to this, numerous witnesses who qualify as experts and who gave the oils careful examination, testify that the oils in question were not edible, but were mechanical oils and fit only for such use.

In contradiction to this evidence the Government produced expert chemical testimony concerning the importations, showing a relatively small percentage of free fatty acids in most of them, supplementing this also by the testimony of the same witnesses concerning the appearance, taste, and smell of the oils. The contention of the Government is that the testimony taken together fails to show that the oils are fit only for manufacturing or mechanical purposes. The Government contends that even if the oils were actually used for mechanical purposes they were nevertheless not unfit for food purposes.

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In view, however, of the inconclusiveness of the chemical tests, and in view of the greater number and experience of the importers' witnesses in so far as the testimony related to the appearance, taste, and smell of the oils, and in view of the fact that the oils were actually imported and sold as and for mechanical oils, it seems to be established that the oils fell within the class of manufacturing and mechanical oils created by paragraph 626 above referred to. It is true that some of the oils might possibly have been capable of use for food purposes, but such an use, while not an impossible one, would nevertheless have been a perverted and unfit use. The use and the only use for which the oils in question were really fit was the use to which they were actually applied—that is, for manufacturing and mechanical purposes.

The case of Holbrook *v.* United States (1 Ct. Cust. Appls., 263; T. D. 31317) is a case very similar to the one at bar in respect both to the issue and the testimony, and the reported decision in that case covers the entire subject with such fullness as to make a more extended discussion of this case unnecessary. Indeed, the present decision may be said to be a corollary of that in the case just cited in so far as that expression may properly apply to any ruling involving a review of testimony.

In the view above indicated the ruling below should have been for the appellants, and the decision against them is therefore *reversed*.

De Vries, Judge, did not sit in these cases.

(T. D. 32033.)

Excess merchandise.

Downing & Co. *v.* United States (No. 188).

Additional Duty on Excess Goods, when not Allowed.

An American concern with a London branch closed that branch and directed that such supplies as had been forwarded from this country and not consumed should be returned to the United States. Some goods of English manufacture were included in the consignment made up to be returned, but these last were not declared at the home port of entry, apparently through ignorance or mistake, for there is no imputation of fraud. The English goods were fairly to be treated as excess goods and not subject to an additional duty over and above that to which they would have been subject if regularly imported.—United States *v.* Leeming (153 Fed. Rep., 489), distinguished.

United States Court of Customs Appeals, November 22, 1911.

Transferred from United States Circuit Court for Southern District of New York, G. A. 6957 (T. D. 30207).

[Decision reversed.]

Brown & Gerry for appellants.

D. Frank Lloyd, Assistant Attorney General (*Charles E. McNabb* on the brief), for the United States.

Before Montgomery, Smith, Barber, De Vries, and Martin, Judges.

Smith, Judge, delivered the opinion of the court:

The Franco-American Food Co., a corporation doing business in the United States, established a branch office in the city of London,

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England, and forwarded to the London establishment certain cooking utensils and, from time to time, advertising matter and office supplies of American origin. The company finally decided to close its London office and directed its agent in charge to return to the United States all supplies which had been received from the parent house and not consumed. By reason of this order the agent shipped to the United States 139 cases of goods. One hundred and thirty-five of these cases were covered by the sworn declaration of the shipper that they were of American origin, valued at £15, which declaration was accompanied by a "yellow certificate" from the American consul to the same effect. On arrival the importation was entered on the shipper's declaration and consular certificate, which constituted a special form of invoice used only for returned American goods. Having before them no documents other than the declaration, consular certificate, and bill of lading, the importers naturally described the importation in their entry as 139 cases of printed matter and cooking utensils of American origin, valued at £15. To the entry was attached the oath of the president of the company that all the articles were of American manufacture. After entry, 9 of the 139 cases were sent for examination to the public stores, where it was discovered that a part of the importation was of English, and not of American origin. This brought about an investigation, as a result of which it was ascertained, with the aid of the Franco-American Co., that English goods, appraised at £25 10s. 9d., had been included in the shipment, and that the total value of the American goods shipped was £159. In accordance with regulations, the collector reported the case to the Treasury Department, which instructed him to lay the matter before the United States attorney, and if that officer was of the opinion that the presumption of fraud arising from the facts could be rebutted, to release the merchandise upon payment of additional duty. As, subsequent to these directions, the collector treated the excess importation as an honest mistake and did not seize the goods or proceed against the importer, as prescribed by law in cases of attempted fraud, it is evident that he was advised that the presumption of fraud could be rebutted. Following the instructions, he admitted the American goods free and assessed the goods of English origin not only for the usual duties, but for the additional duty prescribed for undervaluation by section 32 of the act of July 24, 1897, the material parts of which are as follows:

SEC. 32. * * * If the appraised value of any article of merchandise subject to an ad valorem duty or to a duty based upon or regulated in any manner by the value thereof shall exceed the value declared in the entry, there shall be levied, collected, and paid, in addition to the duties imposed by law on such merchandise, an additional duty of one per centum of the total appraised value thereof for each one per centum that such appraised value exceeds the value declared in the entry, but the additional duties shall only apply to the particular article or articles in each invoice

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that are so undervalued and shall be limited to fifty per centum of the appraised value of such article or articles. Such additional duties shall not be construed to be penal, and shall not be remitted, nor payment thereof in any way avoided, except in cases arising from a manifest clerical error, nor shall they be refunded in case of exportation of the merchandise, or on any other account, nor shall they be subject to the benefit of drawback: *Provided*, That if the appraised value of any merchandise shall exceed the value declared in the entry by more than fifty per centum, except when arising from a manifest clerical error, such entry shall be held to be presumptively fraudulent, and the collector of customs shall seize such merchandise and proceed as in case of forfeiture for violation of the customs laws, and in any legal proceeding that may result from such seizure, the undervaluation as shown by the appraisal shall be presumptive evidence of fraud, and the burden of proof shall be on the claimant to rebut the same and forfeiture shall be adjudged unless he shall rebut such presumption of fraudulent intent by sufficient evidence. The forfeiture provided for in this section shall apply to the whole of the merchandise or the value thereof in the case or package containing the particular article or articles in each invoice which are undervalued: *Provided further*, That all additional duties, penalties, or forfeitures applicable to merchandise entered by a duly certified invoice, shall be alike applicable to merchandise entered by a pro forma invoice or statement in the form of an invoice, and no forfeiture or disability of any kind, incurred under the provisions of this section shall be remitted or mitigated by the Secretary of the Treasury. The duty shall not, however, be assessed in any case upon an amount less than the invoice or entered value.

The importer protested against the assessment of additional duties and claimed that the English merchandise should be treated as excess goods omitted from the invoice and as prescribed in articles 1045 and 1046 of the Customs Regulations, which are as follows:

ART. 1045. *Omission from invoice.*—If a package be found by the appraisers to contain any article not specified in the invoice, and they shall be of opinion that such article was omitted with fraudulent intent, the contents of the entire package will be liable to seizure and forfeiture. But when, in the opinion of the appraisers, no fraudulent intent is apparent, the value of the excess will be added to the entry and duties paid accordingly.

ART. 1046. *Excess of merchandise.*—Increased duty only is incurred by a simple excess of quantity over the quantity expressed in the invoice; but where the value of the goods as declared in the entry is less than the appraised value thereof, both increased and additional duties accrue upon the quantity of like goods found in excess of that specified in the entry.

The Board of General Appraisers was apparently of the opinion that the objection of the importers was well taken; but, considering that it was bound by the decision in United States *v.* Leeming (153 Fed. Rep., 489), the protest was overruled, and the importers appealed

The decision in this case turns on the construction which should be given to section 7 of the act of June 10, 1890, as amended by section 32 of the tariff act of July 24, 1897. In terms that section provides that "if the appraised value of any article of imported merchandise subject to an ad valorem duty or to a duty based upon or regulated in any manner by the value thereof shall exceed the value *declared in the entry*, there shall be levied, collected, and paid, in addition to the duties imposed by law on such merchandise, an addi-

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tional duty * * * but the additional duties shall only apply to the *particular article or articles in each invoice that are so undervalued.*"

It is admitted by the Government that the declaration of the shipper and the consular certificate thereto attached constituted the special invoice required for returned goods of American origin and that the entry of the importer was made thereon.

This case may be considered from the point of view, first, that the invoice, entry, and valuation of the goods presented by the importer to the collector covered by their terms only American goods and that therefore the British goods were not invoiced, entered, or valued at all by the importer; second, that the invoicing, entry, and valuation as American goods of what were really British goods was in effect the invoicing, entry, and valuation of British goods.

If the invoice, entry, and valuation of the goods covered only the American goods, then it appears to us clear that the imposition of additional duties can not be sustained. Under the language of the statute, to justify the imposition of additional duties, it would seem that there must be, first, a value declared in the entry; second, that that value must be applicable to some particular article set out in the invoice; and, third, that it must be below the appraised value. If no value for goods of English origin was declared in the entry and no English goods whatever were included in the invoice, it would seem that their subjection to additional duties was not authorized, especially as the law itself provides that additional duties shall apply only to *the particular article or articles in each invoice that are so undervalued.* As the American goods were not subject to any duty at all, additional duties could not of course attach to them, however much they might exceed either the entered or invoice value. On a literal interpretation of the statute and on the assumption that there was no entry, invoice, or valuation of British goods, we think it plain that the British goods must be considered merely as excess goods and not subject to additional duties. The only question that remains to be considered is whether this court would be justified in giving to the provision under consideration a more comprehensive meaning than its language actually imports. Can we say that although the lawmaker did not employ words apt to the purpose he truly intended that additional duties should be exacted on goods neither entered nor invoiced nor valued by the importer? We think not.

The language of the enactment appears to be clear, definite, and certain. Under such circumstances, to expand the provision and inject into it words not used by the legislator would not be warranted, and still less warranted, if that be possible, when it is considered that the additional duty clause is on its face a punitive measure. In certain contingencies, in order to give effect to the actual intent of

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the legislature, it is true that the language of a law may be broadened or restricted by the courts. So far as we are aware, it has never been held, however, that that power can be so exercised as to penalize an act or omission the punishable nature of which has not been formally and legislatively announced. On the theory that the invoice, entry, and valuation of American printed matter did not cover printed matter of British origin, the exaction of duties in addition to the usual duties would have to be sustained, if sustained at all, not because the importer undervalued an invoiced article, but because articles were imported which were neither entered, valued, nor invoiced. Failure to properly enter and invoice imported goods is not covered by section 32 but by other provisions of customs laws designed to meet just such cases and to prevent evasion of duties and frauds on the revenues which such a failure might facilitate. Section 9 of the act of June 10, 1890, provides for the case of a false entry based on a false invoice, and if the collector believed that a false entry based on a false invoice had been made within the meaning of that section he should have proceeded as therein directed. If he did not so regard it, there still remained section 2901 of the Revised Statutes which covered the situation exactly and defined precisely what should be done. This section reads as follows:

2901. The collector shall designate on the invoice at least one package of every invoice, and one package at least of every ten packages of merchandise, and a greater number should he or either of the appraisers deem it necessary, imported into such port, to be opened, examined, and appraised, and shall order the package so designated to the public stores for examination; and if any package be found by the appraisers to contain any article not specified in the invoice, and they or a majority of them shall be of opinion that such article was omitted in the invoice with fraudulent intent on the part of the shipper, owner, or agent, the contents of the entire package in which the article may be, shall be liable to seizure and forfeiture on conviction thereof before any court of competent jurisdiction; but, if the appraisers shall be of opinion that no such fraudulent intent existed, then the value of such article shall be added to the entry, and the duties thereon paid accordingly, and the same shall be delivered to the importer, agent, or consignee. Such forfeiture may, however, be remitted by the Secretary of the Treasury on the production of evidence satisfactory to him that no fraud was intended.

If therefore in this case packages *were* found to contain articles not specified in the invoice, it became the duty of the appraisers to determine whether such articles were omitted with fraudulent intent. If they so determined, the contents of the entire package became liable to seizure. If, on the other hand, the appraisers were of the opinion that the omission was made without any intention of evading duties or defrauding the revenues, the excess became subject to the usual duties only and on payment thereof the importer was entitled to delivery of the importation.

If we consider the case from the second point of view and regard the printed matter of British origin as covered by the invoice, entry,

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and valuation of American printed matter, there seems to be no escape from the conclusion that such printed matter was more than covered by the valuation of £15 and was therefore not subject to the penalty for undervaluation.

From the customs records it appears that a list identifying by number each case to be shipped and specifying its contents was made out on September 16, 1908, by A. W. Randall, the shipper in London. On September 17, 1908, the list was presented to the consul general at London, who attached to it his yellow certificate, in which the merchandise was described as printed matter valued at £15, although the list clearly disclosed that the cases contained not only printed matter but cooking utensils and other articles as well. Four cases, marked 1*a* to 4*a*, which were actually shipped to the United States and entered, were not mentioned in Randall's list and were therefore not invoiced at all. These four cases and case No. 126 contained the following goods, which on investigation were found to be British and which were not referred to in any way in the invoice:

Articles.	Found in case No.—	Value.
		£ s. d.
Picture frames	126	2 12 0
39,000 order blanks	1*a* and 2*a*	7 6 3
4,500 addressed envelopes, printed	2*a* and 3*a*	1 13 9
2,000 unaddressed envelopes	3*a*	9 6
5,500 stock-on-hand sheets	3*a*	2 2 8
23,400 printed envelopes	4*a*	5 11 2
1,700 statements, printed matter	4*a*	1 5 6
82 index cards	4*a*	1 3
Total		21 2 1

The following were the goods which were invoiced as American goods, but which the investigation disclosed to be British goods:

Articles.	Found in case No.—	Value.
		£ s. d.
1,200 invoice envelopes	127	8 8
4,000 unstamped postcards	129	2 12 0
1,400 large envelopes	129	1 8 0
Total		4 8 8

From this it is evident that the only British goods which could be considered as invoiced were appraised by the appraiser at only £4 8s. 8d., which was more than covered by the £15 valuation, if that sum can be considered as a valuation of the British goods claimed to be invoiced. If it can not be considered as a valuation of British goods, then there was no valuation whatever of British goods made by the importer and therefore no undervaluation. It is true that the entry made by the importer on September 28, 1908, covered the full number of 139 cases and stated that the value thereof was £15,

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but it is equally true that that valuation of £15 can not be made to apply to any particular article or articles claimed to be undervalued. As additional duties are by the express terms of the statute applicable only "to the particular articles or articles in each invoice that was so undervalued," it seems evident that no additional duties should have been imposed.

The case of United States *v.* Leeming (153 Fed. Rep., 489), cited by the Government, dealt with excess goods identical with the goods actually entered, invoiced, and valued by the importer. The facts of that case substantially differed, therefore, from those of this appeal, and we must decline to accept it as decisive of the issue here, especially as we are not wholly in accord with its reasoning, although not at all prepared to say that the conclusion reached was incorrect.

The decision of the Board of General Appraisers is *reversed.*

(T. D. 32034.)

Imitation jet.

UNITED STATES *v.* SHELDON & CO. (No. 310).

IMITATION JET GOODS NOT MANUFACTURES OF GLASS.

Technically "jet goods" are not, of course, imitation jet, but where the record discloses the importer, the collector, and the Board of General Appraisers all considered the importation an imitation jet it could not be properly assessed as jet, and was rightly held to be dutiable as imitation jet under paragraph 109, tariff act of 1909.—United States *v.* Beierle (1 Ct. Cust. Appls., 457; T. D. 31506).

United States Court of Customs Appeals, November 22, 1911.

APPEAL from Board of United States General Appraisers, Abstract 23464 (T. D. 30691).

[Decision affirmed.]

William K. Payne, Deputy Assistant Attorney General (*Leland N. Wood* on the brief), for the United States.

Comstock & Washburn (*Albert H. Washburn* and *George J. Puckhafer*, of counsel) for appellees.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

MONTGOMERY, Presiding Judge, delivered the opinion of the court:

This is an appeal from a decision of the Board of General Appraisers classifying an importation designated as jet bars, brooches, and earrings under paragraph 109 of the tariff act of 1909. The authorities relied upon by the board for this classification were G. A. 6995 (T. D. 30444) and G. A. 7119 (T. D. 30612), the latter being Beierle's case, which was, on appeal to this court, affirmed in T. D. 31506 (1 Ct. Cust. Appls., 457).

It is sought to differentiate the present case from Beierle's case, as it is said that the finding in the present case shows the articles to be jet and not imitation jet, as was the case in Beierle's protest.

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The first inquiry is: In what sense is the word "jet" used in this record? Technically, it must be said that jet goods are not imitation jet goods, but if in the four corners of the record it is made evident that the collector, the importer, and the board all understood the goods to be and treated them as imitation jet, it would be manifestly unjust to now depart from this understanding and reverse the case and give the word a technical meaning as distinguished from a meaning which attaches to it in common use.

It needs no evidence to show that imitation-jet goods are often referred to as jet, and that the distinction is seldom nicely made in common speech. This record very clearly indicates that it was in the ordinary sense that the word "jet" was employed by all parties concerned in this importation. It is true they were entered as jet goods; but they were entered in connection with other goods which were admittedly imitation jet, and were, while designated the same as were these goods, returned by the collector as cut glass or as manufactures of glass.

The collector gives as his authority for classifying these goods Abstract 6822 (T. D. 26417) and Abstract 7181 (T. D. 26559).

In the first case the goods are referred to as jet ornaments, cut glass. The memorandum reads: "The merchandise consisted of jet ornaments with faceted surfaces produced by the process of cutting, and was held to have been properly classified as cut glass."

In Abstract 7181 (T. D. 26559) it is stated that the merchandise consisted of jet millinery ornaments, "which the board found to be composed of molded glass, cut glass, and metal, cut glass being the component material of chief value."

It is manifest by referring to these decisions that the collector intended to characterize these goods as falling within the description given in the abstracts referred to. Again, in the decisions cited by the Board of General Appraisers the articles in question were cut glass or imitation jet.

Furthermore, the invoice value of the goods in suit shows them to be worth but from 4 to 7 cents each, which is inconsistent with the well-understood rarity of real jet, and which leads to the inference that the merchandise was not, in fact, real jet.

We find, therefore, that the importer evidently did not intend to enter these goods as real jet; that the collector did not understand them to be real jet; and that the board in passing upon the importation did not understand that it was dealing with real jet. We are irresistibly led to the conclusion that the article we are dealing with is imitation jet, and that the whole record read together clearly indicates this. This being so, the case is ruled by United States *v.* Beierle, *supra.*

The decision of the board is *affirmed.*

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(T. D. 32035.)

Lime powder—Mixture.

STROHMEYER & ARPE CO. *v.* UNITED STATES (No. 480).

1. A CHEMICAL COMPOUND.

A chemical compound is not simply a mingling of components, but a combination of them, resulting in their destruction as distinct entities and in the development by chemical reaction of a new substance possessing properties radically different from those of its constituent elements.

2. "MIXTURES."

Mixture implies that the corporeal integrity, the separate chemical nature, and individual properties of the mixed ingredients have been preserved.

3. LIME POWDER, A MIXTURE, NOT A CHEMICAL COMPOUND.

A combination of lime, carbonate of lime, and manganese oxide, for use in drying and hardening varnish, is a chemical mixture, and as such is dutiable under paragraph 3, tariff act of 1909.

United States Court of Customs Appeals, November 22, 1911.

APPEAL from Board of United States General Appraisers, Abstract 23840 (T. D. 30865).

[Decision affirmed.]

Brown & Gerry, for appellants.

D. Frank Lloyd, Assistant Attorney General (*Charles D. Lawrence* on the brief), for the United States.

Before MONTGOMERY, SMITH, BARBER, and MARTIN, Judges.

SMITH, Judge, delivered the opinion of the court:

This case involves the classification of merchandise imported at the port of New York and assessed for duty by the collector of customs at 25 per cent ad valorem as a chemical mixture under the provisions of paragraph 3 of the tariff act of 1909, which reads as follows:

3. Alkalies, alkaloids, distilled oils, essential oils, expressed oils, rendered oils, and all combinations of the foregoing, and all chemical compounds, *mixtures*, and salts, and all greases, not specially provided for in this section, twenty-five per centum ad valorem; chemical compounds, mixtures and salts containing alcohol or in the preparation of which alcohol is used, and not specially provided for in this section, fifty-five cents per pound, but in no case shall any of the foregoing pay less than twenty-five per centum ad valorem.

The importers protested that the importation was not a chemical mixture, and among other grounds of protest, which it is unnecessary to discuss, set up the claim that the merchandise was dutiable under the provisions of paragraph 480, which reads as follows:

480. That there shall be levied, collected and paid on the importation of all raw or unmanufactured articles, not enumerated or provided for in this section, a duty of ten per centum ad valorem, and on all articles manufactured, in whole or in part, not provided for in this section, a duty of twenty per centum ad valorem.

The Board of General Appraisers overruled the protest, and the importers appealed.

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The deputy appraiser reported the merchandise to be a mixture of lime, carbonate of lime, and manganese oxide, used for the purpose of drying and hardening varnish. R. W. Moore, chemist in charge of the United States Appraiser's Laboratory at New York, testified on the part of the importer that the importation was a mixture of lime, carbonate of lime, and manganese oxide, mechanically and not chemically combined. Hermann Arpe, treasurer of the importing company, was of the opinion that the merchandise was made up of lime and a "manganate of lead." He was in accord, however, with the Government chemist, that the composition, whatever its components might be, was a mechanical mixture and not a chemical compound. The board found that the importation, which was invoiced as lime powder, consisted of a mixture of lime, carbonate of lime, and manganese dioxide. On the evidence presented by the record the only question to be determined by the appeal is whether a mechanical mixture of lime, carbonate of lime, and manganese oxide or dioxide is a chemical mixture within the meaning of paragraph 3 of the tariff act of 1909 as hereinbefore set out. Lime, as shown by the testimony, results from the chemical combination of calcium and oxygen, carbonate of lime from the chemical combination of lime and carbonic acid, and manganese oxide or dioxide from the chemical combination of manganese and oxygen. That these components of the merchandise are chemicals is not disputed. To make up the goods under discussion these chemicals were commingled in such a way as to preserve their individual properties and separate chemical nature, and admittedly such an association of materials constitutes not a chemical compound but a mechanical mixture. From this it would seem to follow that the resultant product was a mixture of chemicals, or, in short, a chemical mixture.

In this connection it should be remembered that a mingling of chemicals must result either in a chemical compound, destroying the identity of the original materials, or in a mere mixture in which the chemical individuality of the original materials is preserved. Scientifically speaking, mere mixtures of chemicals are known as mechanical mixtures. The scientific expression in a tariff law was open, however, to a construction which would include all classes of mixtures held together mechanically; and we think Congress deliberately made use of the designation "chemical mixtures" in order to manifest clearly its intention that the operation of paragraph 3, in so far as mixtures were concerned, was to extend to mixtures of chemicals and not to mixtures of other substances which were not chemicals. Counsel for the importers earnestly argue, however, that "chemical compounds" and "chemical mixtures" are virtually synonymous terms, and that the addition of the latter phrase to paragraph 3 accomplished no extension of its provisions. To that proposition we are

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not willing to accede; first, because a chemical combination of constituent elements does not necessarily result from a mixture of chemicals, and, second, because it seems to be well settled by judicial decisions and by scientific usage that there is an essential difference between a mixture and a chemical compound.

As we have already observed, a chemical compound necessarily implies not a mere mingling of components but a chemical combination of them, resulting in their destruction as distinct entities and in the development by chemical reaction of a new substance possessing properties radically different from those of its constituent elements. McKessen *v.* United States (1 Ct. Cust. Appls., 213–216). On the other hand, in chemistry and mineralogy the term "mixture" carries with it the idea that the corporeal integrity of the ingredients has been preserved and that their incorporation has not lost to them their individual properties and separate chemical nature. (Webster's International Dictionary; Standard Dictionary; Century Dictionary.) This distinction between a mixture and a chemical compound is so well known and has been so frequently pointed out by the decisions that it is inconceivable that Congress should have so mistaken the meaning of the terms as to assume that they were equivalents and might be used interchangeably. *In re* Auffmordt & Co. (T. D. 11074); Levi *v.* United States (126 Fed. Rep., 420; T. D. 25050); *in re* Isaacs, Vought & Co. (T. D. 25410); *in re* F. Behrend (T. D. 25733); *in re* F. R. Philipps & Sons (T. D. 27051); United States *v.* Proctor (145 Fed. Rep., 126; T. D. 27115). The very fact that there is a difference between a mixture and a chemical compound and that disputes arose as to whether importations belonged to one category or the other was, we think, the cause which induced Congress to amend paragraph 3 of the tariff act of 1897 by making provision therein for chemical mixtures. We are of opinion that the amendment was not a purposeless bit of legislative redundancy, but was the result of a long experience which justified Congress in concluding that litigation would be best avoided by subjecting to the same rate of duty articles the true nature of which had been a frequent subject of controversy.

Counsel for the importers contend that the decision of the board is in conflict with the conclusions reached by it in T. D. 29922 on the protest of the same importers. In that case the board held, in July, 1909, that a mixture from which no chemical union resulted was not a chemical compound, and that therefore a mixture of lime, carbonate of lime, and manganese oxide, resulting in no combination of the constituents, was a mechanical mixture and not dutiable as a chemical compound under paragraph 3 of the act of 1897. As the law then stood the board was correct in so deciding, but whatever weight that decision might have in determining the nature of the goods involved in this appeal, it can hardly be considered as adverse to

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their classification under paragraph 3 as subsequently amended by the tariff act of August 5, 1909. Counsel call attention also to T. D. 30223 and claim that the finding there made is in conflict with the meaning given by its decision in this case to the term "chemical mixtures." We think that the facts disclosed by the record in T. D. 30223 do not warrant that conclusion. The merchandise which the board was required to classify in that case was a mixture of 20 per cent Trinidad asphalt, 20 per cent California asphalt, 12 per cent liquid asphalt, 6 per cent ammonia, and the balance water. None of these substances, with the exception of ammonia, could well be designated as a chemical, and hence the composition could not be regarded as a mixture of chemicals.

The decision of the Board of General Appraisers is *affirmed.*

DE VRIES, Judge, did not sit in this case.

(T. D. 32036.)

Entry—Animals.

VAN TREESE *v.* UNITED STATES (No. 484.)

WHERE NO ACTUAL TENDER OF ENTRY WAS MADE.

It is unnecessary to determine whether the absence of an inspector would validate on a later day a tender of entry made during the inspector's absence, it appearing here no actual tender of entry was made of certain horses it was desired to import on August 5, 1909, and that the tender of entry was made in fact on August 6, 1909. The horses were rightly held dutiable as of that date under the act in force that day.

United States Court of Customs Appeals, November 22, 1911.

APPEAL from Board of United States General Appraisers, Abstract 23890 (T. D. 30879).

[Decision affirmed.]

Richardson & Doan for appellant.

Wm. K. Payne, Deputy Assistant Attorney General (*Frank L. Lawrence* on the brief), for the United States.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

MONTGOMERY, Presiding Judge, delivered the opinion of the court:

It appears in this case that eight horses were brought into the United States from Mexico through the port of Douglas, Ariz., on August 6, 1909, and that a duty of $30 a head was assessed thereon under paragraph 227 of the tariff act of 1909. The protest sets forth that the horses were of American origin, and would have been entitled to free entry under the act of 1897; that the importer had the horses at the international line and was ready to make entry thereof on August 5, when the terms of the act of 1897 would have been applicable, but was unable to do so by reason of the absence of the sanitary inspector of the Bureau of Animal Industry, who was engaged in making inspections elsewhere. The importer claimed that it was through no fault of his that the importation was not made on August 5, when the

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horses could have been returned free of duty, and claims the right to be relieved from the payment of duty imposed under the act of 1909.

The Board of General Appraisers held that it might well be conceded that the animals could not have been brought into the United States before having been examined by a Government inspector, yet that the importer, in order to place himself in a position to claim the right of entry, should have at least tendered an entry, and the board found that there was nothing in the record to show that a tender of entry was made, and that the absence of the inspector would not prevent the importer from making tender, thus placing himself in position to demand the rights of an entry under the previous law.

The importer's claim is stated in the petition for appeal to this court in the following language:

> I claim the importer could not tender an entry on August 5, as the United States veterinary was not available for the preliminary inspection of the animals, which were being held on Mexican territory on account of entrance being refused, as no certificate of health could be had.

The importer has apparently since shifted his ground, as it is said in the brief of counsel that the record must unquestionably show that the acting deputy collector refused entry on the 5th of August, 1909, and that a refusal could not have been made by him unless there had been an offer of a tender of the animals. It would appear that the record could not have been before counsel who prepared the brief or else erroneous inferences from the facts appearing in the record have been drawn. It is said in his brief:

> It further appears from the letter of the collector at Nogales * * * that the horses in question were at the international line and ready to be entered on August 5, 1909.

This is a misconstruction of what the report of the collector really was. In the letter submitting the protest, the collector said:

> The principal contention of Mr. Van Treese is that the horses in question were at the international line and ready to be entered on August 5, 1909, the day before the new tariff act went into effect, and that he was prevented from entering them on that day by the absence of the sanitary inspector of the Bureau of Animal Industry, who was engaged in making inspections elsewhere.

The brief again states that the decision of the Board of General Appraisers shows the fact to be that the importers had the horses at the international line and ready and anxious to make entry thereof on August 5, 1909. What the board really stated in the opinion was that—

> Objection to the payment of this duty is made for the reason, as set forth in the protest, * * * that the importer had the horses at the international line, and was ready and anxious to make entry thereof on August 5.

Counsel for the importer further says:

> The protest, which is not controverted, shows not only that the animals were there but that they were refused entrance because no certificate of health could be had.

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Counsel for the Government do controvert the allegations of the protest. It is contended on behalf of the Government that it was incumbent on the importer not only to assert his claim in his protest, but to overcome the presumption in favor of the correctness of the collector's decision by actual proof of the facts asserted.

It will be seen that no evidence or allegations of an entry on August 5 or of tender thereof appears.

Section 29 of the act of 1909 provides that—

> On and after the day when this act shall go into effect all goods, wares, and merchandise previously imported, for which no entry has been made, * * * shall be subjected to the duties imposed by this act and to no other duty, upon the entry * * * thereof.

We need not determine whether absence of the inspector would have afforded sufficient ground for accepting an inspection at a later date had entry been tendered on the 5th, as the record does not present this question. The case is one of apparent hardship, but we see no way open to relieve the importer.

Decision *affirmed.*

(T. D. 32037.)

Ornamental feathers.

GOODMAN & CO. ET ALS. *v.* UNITED STATES (No. 525).

MANUFACTURED FEATHER ARTICLES, WINGS, POMPONS, ETC.

In a decision of these cases at a former term it was stated the importation might be appropriately described as either quills or feathers. It was there attempted to make plain, by exhibiting the previous history of the pertinent clauses of the law and by contrasting the use of certain words employed in paragraphs 438 and 469 of the tariff act of 1909, what seemed to the court must have been the intention in that particular enactment. The conclusion there stated was reached after an examination and full consideration of the pertinent authorities, and is now adhered to.

United States Court of Customs Appeals, November 22, 1911.

APPLICATION for a rehearing (T. D. 31658).

[Denied.]

Joseph G. Kammerlohr and *John Giblon Duffy* for the motion.

Wm. K. Payne, Deputy Assistant Attorney General (*Charles Duane Baker* on the brief), for the United States.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

MONTGOMERY, Presiding Judge, delivered the opinion of the court:

This case was decided May 29, 1911, and is found reported in T. D. 31658. A motion for a rehearing has been filed, in which the case is reargued, and considerable space is devoted to establishing the contention that the word "quills" is appropriately used to designate the wing and tail feathers of a bird. This fact, however, was fully recognized in the opinion. It was said: "It is established, not only by the testimony but by the lexicographers, that the tail and wing feathers of a bird are appropriately described as quills." But it was also held that the complete tail and wing feathers of a bird are

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also appropriately described as feathers, and it was recognized therefore that the question of classification of these goods was one of some difficulty. Based in large part upon the correlation of the word "quills" in paragraph 463 to other products of similar character with the horny substance of the quills, we were of the opinion that the word "quills" in that section was used to describe the horny substance of the quill, and that as these articles were likewise dutiable as feathers, they should be held dutiable under paragraph 438, as had been determined by the Board of General Appraisers.

It was said in the course of the opinion that the wing and tail feathers of certain birds have been held dutiable as feathers, citing the two cases of G. A. 1428 (T. D. 12832) and G. A. 1470 (T. D. 12919). It is suggested in the brief of counsel that the statement in the brief of Government's counsel presented at the hearing misled the court. This statement appears to be based upon the fact that the citation of G. A. 1428 (T. D. 12832) was in our main opinion cited as G. A. 1328, following an error in the brief of Government's counsel. The implication is that the court accepted the brief of counsel and made no examination of the cases in question. It is due to the court, however, to say that the cases were fully examined before the opinion was written, and that the error in citation must have been perpetuated by dictating from the brief of counsel when the opinion was prepared.

Counsel are also mistaken in assuming that we deemed these cases as authority for anything beyond the fact that the word "feathers" was in each of the cases recognized as an appropriate term to describe the wing and tail feathers of a bird, or that it was believed that the board was then dealing with provisions contrasting the word "quills" with the word "feathers." The only reason for citing these decisions was to show that there had been a judicial recognition of the fact that the wing and tail feathers of birds were appropriately described as feathers. The opinion recognizes throughout that the word "quills" is equally appropriate for describing such feathers. The decision, as we sought to make plain, rests upon a contrast of the two provisions, based upon the correlation of the terms and the previous history. It was said:

> In the present case it is to be noted that the words interpreted by the decision of the court in United States *v.* Stearns, *supra*, were "quills, prepared." In the present act the legislation relates to "manufactures of quills," and from the connection in which the word is employed it might well relate to quills in a different sense. Paragraph 463 deals with "bone, chip, grass, horn, quills, india rubber, palm leaf, straw, weeds, or whalebone, or of which these substances or any of them is the component material of chief value, not specially provided for in this section." There is nothing provided for in this section which suggests manufactures to be used as articles of millinery or in the making up of hats or bonnets, whereas under paragraph 438 the articles there provided for are those used in making and ornamenting millinery, such as hats and the like. We think the intent of Congress was to include in paragraph 438 all articles of this class, and that as the language employed by the added portion of the section is appropriate for this purpose, it should be given that construction.

The application for a rehearing is *denied.*

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(T. D. 32038).

Lactarene.

UNITED STATES *v.* CORSI, ZUMSTEG & CO. (No. 632).

LACTARENE FREE OF DUTY.

A gritty, yellowish powder, with the trade name of "plasmon," but invoiced as lactarene, and known to the trade as lactarene, casein, or milk albumen, is not milk, preserved. The importation was free of duty as lactarene under paragraph 594, tariff act of 1909.

United States Court of Customs Appeals, November 22, 1911.

APPEAL from Board of United States General Appraisers, Abstract 24896 (T. D. 31335).

[Decision affirmed.]

D. Frank Lloyd, Assistant Attorney General (*Leland N. Wood* on the brief), for the United States.

Walden & Webster (*Howard T. Walden* of counsel) for appellees.

Before MONTGOMERY, SMITH, BARBER, and MARTIN, Judges.

SMITH, Judge, delivered the opinion of the court:

The merchandise involved in this appeal was classified as "milk, preserved," and assessed for duty by the collector of customs at the port of New York at 2 cents per pound under the provisions of paragraph 239 of the tariff act of July 24, 1897, which paragraph reads as follows:

239. Milk, preserved or condensed, or sterilized by heating or other processes, including weight of immediate coverings, two cents per pound; sugar of milk, five cents per pound.

The importers protested that the importation was not preserved milk and set up the claim that the article assessed for duty was entitled to free entry as "lactarene" under the provisions of section 2 and paragraph 594 of the act above mentioned, which section and paragraph are as follows:

Sec. 2. That on and after the passage of this act, unless otherwise specially provided for in this act, the following articles when imported shall be exempt from duty:

594. Lactarene.

The Board of General Appraisers sustained the protest and the Government appealed.

The merchandise in controversy is a gritty, yellowish powder, to which the trade-mark name of "plasmon" has been given by the Plasmon Co., for which it is imported. This designation seems to be a purely fanciful one, which, for advertising purposes and to distinguish the goods from those of rival concerns, has been substituted for the ordinary names by which the product in question is commonly known.

The testimony on behalf of the importers is to the effect that although the article is sold as plasmon to the customers of the Plasmon Co., it comes to this country from the manufacturer marked

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as "lactarene," and that it is known to the trade either as lactarene, casein, or milk albumen. On the part of the Government Wilton G. Berry, a chemist in the laboratory of the appraiser's office at the port of New York, testified that the merchandise as shown by a chemical analysis was a "soluble casein compound;" that is, a casein made soluble in water by the addition of soda or potash.

This is all the record evidence as to the nature and character of the imported merchandise, and if it stood alone we should have some hesitation in deciding that it established anything more than that the disputed product was casein, an article which is not milk, but one of the constituents of milk. The finding of the board that lactarene is but another name for casein is well supported, however, by other facts of which we think judicial notice may be taken, and we are of opinion that the decision reached by that tribunal should not be disturbed. See 16 Cyc. L. & P., 851; Graham *v.* Williams (21 La. Ann., 594, 597); Hatch *v.* Dunn (11 Tex., 708, 715); United States *v.* Teschmaker (22 How., 392, 403).

It is a matter of industrial history that some 60 years ago a Scotchman named Pattison discovered a new material for the fixing of colors on woven fabrics and patented the process for making it. This material was produced by treating buttermilk or skimmed milk with acids, and to the article thus evolved Pattison gave the name of "lactarine." *In re* Hutchinson (T. D. 27645); United States *v.* Bromwell (159 Fed. Rep., 218, 219).

Originally the term "lactarene" had no higher sanction than has the trade-mark designation "plasmon," but as time passed and Pattison's invention came into use that which was once a mere name seems to have acquired by popular usage a definite place in the English language and a meaning synonymous with that of "casein." Lactarene is variously defined as follows:

(1) A yellowish, granular, pulverulent *casein* or curd of milk, prepared by precipitating skimmed milk with dilute acids, and used as a mordant in calico-printing. (Standard Dictionary.)

(2) The commercial name for a preparation of the casein of milk used by calico printers like albumen. (Century Dictionary.)

(3) A preparation of casein from milk used in printing calico. (Webster's International Dictionary.)

(4) Lactarene. The casein of milk is commercially prepared by being freed from fat, precipitated by an acid, thoroughly purified, dried, and powdered. It is insoluble in water, but is soluble in an alkali, such as ammonia, and in this form is used, like albumen, for fixing pigment colors in calico printing. The cloth, after it has been printed, is steamed, the ammonia is driven off, and the pigment is thereafter able to resist the action of water. (The Americana.)

When to these definitions of lactarene is added the consideration that to produce casein milk is subjected to practically the same treatment as that employed by Pattison to obtain lactarene, it is not unreasonable to conclude that the terms "lactarene" and "casein" are

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really designative of the same substance. (See definitions of casein in the Century Dictionary; Standard Dictionary; New International Encyclopedia; Watts' Dictionary of Chemistry, p. 334; Commercial Organic Analysis, Allen, Vol. IV, pp. 88–90.)

That "lactarene" and "casein" are really verbal equivalents, and that "lactarene" is in truth nothing more than the lay designation for the substance known to science as "casein," is confirmed by the fact that those terms are so regarded in technical works and by scientific authors dealing with mordants and with the constituents and derivatives of milk.

Wagner's Chemical Technology, page 792, referring to the uses of casein, says:

Casein is also used in calico printing as a mordant under the name of lactarene.

Sadtler's Industrial Organic Chemistry, dealing with the uses of casein, discusses the subject, at page 264, as follows:

Casein is now used on a large scale, first, as a basis of food preparations; second, as a fixing agent in calico printing instead of albumen; and third, as a substitute for glue in cements. For the first class of compounds, the casein salts of the alkalies and alkaline earths are used, and are obtained by dissolving casein in the calculated amount of caustic alkali, alkali metal, carbonate or phosphate or milk of lime, and evaporating the solution *in vacuo*. The products are dry, white powders. For the second class of compounds, casein is generally dissolved in ammonia, the solution evaporated, and the residue mixed with milk of lime. *Lactarene* is a commercial preparation of this class, used as a fixing agent.

Crookes' Handbook of Dyeing and Calico Printing, pages 78–79, treating of mordants, says:

Under the name of lactarine, casein is employed as a mordant for fixing pigment colors; for instance, ultramarine. Under certain conditions the results are moderately good, but great care and attention are required. Lactarine is insoluble before use and has to be dissolved in an alkaline liquid, such as ammonia or borax. The colors prepared with lactarine are liable to decomposition, and a color that may have worked well in the morning, in the afternoon has been known to have changed either into a solid mass or a curdy conglomerate totally unfit for printing, and not reconvertible into good color again by any means.

At page 185 the same book says:

In printing, magenta is applied to calico with albumen, and thickened with starch or gum. "Lactarine" (casein) may also be used instead of albumen when no additional thickening is needed. In either case the goods after printing are steamed from 30 to 60 minutes.

The Printing of Cotton Fabrics, by Antonio Sansone, page 171, refers in the following terms to the employment of casein in calico printing:

Casein or lactarine is not largely employed in calico printing for the fixture of pigments, in the same way as albumen, as it does not yield such fast colours. It possesses the same elementary composition as albumen, but is far from possessing the same fixing properties. The commercial article, which is in the form of a yellowish white powder, is obtained from skimmed milk by precipitation with weak acids, then filtering, washing until free from acid, and drying.

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Casein, Its Preparation and Technical Utilization, by Robert Scherer, Ed. 1906, pages 25–26, speaking of the method of separating casein from milk, says:

> By this means 100 parts of skim milk will yield about 8½ parts of damp and 3½ parts of dry casein. This is put on the market as "technical casein" or "lactarin." It is soluble in alkalies, but insoluble in water unless the latter receives an addition of 10 per cent of some alkali (*e. g.*, soda, borax, or ammonia). Dry casein still contains about 10 per cent of moisture, which constitutes one of the factors determining the quality of the product, though less important than the appearance and smell. The latter must on no account be ammoniacal, but recall that of fresh milk, and the color must be pure white. The purer the color and the more agreeable the smell, the higher the value.

In Spon's Encyclopedia, at page 1304, criticizing the use of the term "lactarine," it is remarked that:

> It is to be regretted that, in an English patent for the use of casein as a mordant, it received the utterly needless and unscientific name of "lactarine," to which the trade still cling.

The Government insists, however, that under the evidence the importation is not casein, but a casein compound designed for use as a food and not as a mordant and that therefore it can not be admitted free as lactarene even if that term be accepted as another name for casein. In this contention there would be much merit if the facts were such as to justify the conclusion that the merchandise under discussion is not casein, but something else. Unfortunately for the Government's argument in that behalf the assumption of facts upon which it is based is warranted neither by the record nor by matters outside of the record of which judicial notice may be taken. Berry, the Government chemist, did testify that the article imported was a soluble casein compound—a compound of casein and soda or potash, but neither from the testimony of the witnesses nor from the official analysis does it appear that there was any combination between the casein and the soda or potash, and so far as the record discloses the alkalies mentioned may have rendered the casein soluble by taking up the fats and oils surrounding it or in some other purely mechanical way. Moreover, it is fairly evident from Berry's testimony, taken as a whole, that it was not his intention to convey the idea that casein had been so combined with soda or potash as to lose its chemical identity as casein and to become some other article. Indeed, he makes it clear that the addition of soda or potash to the casein is for the purpose of making the latter soluble and that by "soluble casein compound" he means no more than "a sort of casein soluble in water."

The suggestion that the importation is a food product and that lactarene is unfit for human consumption finds no support either in the evidence or in the process for making lactarene as described by Pattison. As a matter of fact Pattison did not discover a new

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material, but a new use for a very old material. The curdling of milk with acids is almost as ancient as cheese making, and Pattison simply found out that the curd of milk, a very common foodstuff, might be made to serve a useful industrial purpose as a mordant. To produce lactarene Pattison's patent did not require the use of a poisonous acid, and if it did there is nothing in the case to sustain the deduction that the curd of milk produced by a poisonous acid would be any less casein than the curd of milk produced by an acid as harmless as vinegar.

We think the finding of the board that the merchandise in question is casein is sustained by the evidence and that popular usage has given to the term "lactarene" a signification which makes it synonymous with "casein."

The decision of the Board of General Appraisers is therefore *affirmed*.

DE VRIES, Judge. did not sit in this case.

(T. D. 32039.)

Metal erasers.

IRWIN & CO. *v.* UNITED STATES (No. 638).

1. CONSTRUCTION.

According to the strict rules of grammatical and legal construction and in the absence of restraining considerations, a modifying clause following a number of recitals applies to its immediate antecedent and not to all those antecedents; but,

2. ERASERS OF METAL WITH FIXED BLADES.

The legislative history of paragraph 152, tariff act of 1909, seems to show that the additional provision inserted therein, the basis of contention here, was intended to enlarge the class, make it more comprehensive, not less so; and erasers of metal with fixed or rigid blades set into handles of wood or other material are dutiable under that paragraph.

United States Court of Customs Appeals, November 22, 1911.

APPEAL from Board of United States General Appraisers, G. A. 7165 (T. D. 31294).

[Decision affirmed.]

Comstock & Washburn (*Albert H. Washburn* and *Geo. J. Puckhafer* of counsel), for appellants.

Wm. K. Payne, Deputy Assistant Attorney General (*Martin T. Baldwin* on the brief), for the United States.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

MARTIN, Judge, delivered the opinion of the court:

The merchandise involved in this case consists of metal erasers, which are well-known articles for desk use, falling in a general way under the head of stationery supplies. They are composed of fixed or rigid metal blades set into handles of wood or other material.

The importation was entered under the tariff act of 1909, and the collector classified the articles as "erasers," under paragraph 152 of that act, and assessed the duty accordingly.

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The importers protested against this classification and contended that the erasers in question did not come within the terms of that paragraph, because they had fixed blades, whereas the paragraph, the importers contend, includes only such erasers as have folding blades.

This protest was duly heard upon evidence by the Board of General Appraisers, and the same was overruled. The appellants excepted to the board's decision and now pray for a reversal thereof.

It appears at once, therefore, that the issue made by the parties is very distinct and clearly defined. It is this: Does paragraph 152 of the act of 1909 include within its purview such erasers as have fixed blades or only such as have folding blades? The appellants contend that only erasers having folding blades are covered by the paragraph. The appellee maintains that the paragraph includes erasers having either folding or fixed blades.

The pertinent part of the paragraph reads as follows:

152. Penknives, pocketknives, clasp knives, pruning knives, budding knives, erasers, manicure knives, and all knives by whatever name known, including such as are denominatively mentioned in this section, which have folding or other than fixed blades or attachments, valued at not more than forty cents per dozen, forty per centum ad valorem. * * *

It will be seen that the decision of the present question depends upon the scope and application to be given to the clause "which have folding or other than fixed blades or attachments," above appearing. If that clause modifies only its next preceding antecedent, then the contention of the appellee should be sustained; if, on the other hand, it modifies all the terms preceding it in the paragraph, then the exception of the appellants should be sustained.

According to the strict rules of grammatical and legal construction, and in the absence of restraining considerations, such a modifying clause following a number of recitals applies only to its immediate antecedent and not to all those which precede it. Such a rule is, however, only the beginning of a real inquiry into the subject, because, manifestly, it must yield if other and controlling reasons appear to the contrary.

In order to investigate the subject more fully, it is well to refer first to the corresponding paragraph of the act of 1897, being paragraph 153 of that act. It will be seen that the later paragraph assumes the appearance of an amendment of the earlier one rather than that of an entirely new and original enactment.

Paragraph 153 of the act of 1897 reads in part as follows:

153. Penknives or pocketknives, clasp knives, pruning knives, and budding knives of all kinds, or parts thereof, and erasers or manicure knives, or parts thereof, wholly or partly manufactured, valued at not more than forty cents per dozen, forty per centum ad valorem. * * *

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It thus appears that the earlier paragraph contained in the same order all of the knives which are specifically named in the later one, and this in comprehensive and unqualified terms; and that under the earlier provision all erasers were included within the same classification, those having fixed blades as well as those having folding blades. If appellants' view is adopted, the later enactment has the effect of taking out of that classification all knives and erasers of the kinds therein named which have fixed blades, leaving the paragraph to apply only to those having folding blades. This would effect a radical change in the subject matter, for it appears from the testimony that almost all erasers have fixed blades; and common knowledge is to the effect that many pruning knives and budding knives have the same; and this is also in some measure true of manicure knives. Therefore, if appellants' construction obtains, the later paragraph has withdrawn from the earlier classification about all erasers and many pruning, budding, and manicure knives, and has made no other specific provision for any of the substantial classes thus withdrawn.

This result militates strongly against the contention of appellants because there is nothing in the legislative history of the enactment which indicates such a purpose. The more reasonable view therefore seems to be that the later paragraph was intended to cover in the same measure as the earlier one all those articles which are specifically named in both; and that the additional provision in the later one containing the clause in question was not intended to limit the class already created by the first paragraph, but was intended only to enlarge it and make it more comprehensive. The meaning is that the prescribed duty shall be assessed not only upon all penknives, pocketknives, clasp knives, pruning knives, budding knives, erasers, and manicure knives, as had been also provided by the act of 1897, but in addition thereto upon a residuary class, namely, all knives by whatever name known, including such as are denominatively mentioned in the section, which have folding or other than fixed blades or attachments. The limiting clause therefore applies only to the added class of knives, which class and limitation came into the paragraph together, and not to those already specifically and unqualifiedly mentioned in the paragraph. The clause "including such as are denominatively mentioned in this section" refers to the kinds of knives named in paragraph 154 of the present act. That paragraph provides in terms for "table, butchers', carving, cooks', hunting, kitchen, bread, butter, vegetable, fruit, cheese, carpenters' bench, curriers', drawing, farriers', fleshing, hay, tanners', plumbers', painters', palette, artists', and shoe knives." These knives almost all have fixed or rigid blades, yet in some few cases they have folding blades. The case of United States *v.* Borgfeldt, (1 Ct. Cust. Appls., 255), relates to one of the few instances of such

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knives with folding blades. The construction contended for by the appellee has the effect only of taking from the above classification any knives having folding blades and adding such to the class established by paragraph 152, thus leaving paragraph 154 inclusive only of knives with fixed blades. This interpretation is the reasonable one, and the decision of the board following it is *affirmed*.

(T. D. 32040.)

Lacquered tin boxes containing paints.

ILLFELDER & CO. ET AL. *v.* UNITED STATES (No. 640).

LACQUERED METAL BOXES, WITH COMPARTMENTS AND HINGED LIDS, CONTAINING PAINTS.

Subsection 18 of section 28, tariff act of 1909, makes provision, it is true, for a duty on containers, but paragraph 195 of that act carries a specific provision for certain sorts of containers, and the merchandise here falls directly within that specific provision; lacquered metal boxes, with compartments and hinged lids, containing paints, though the lids be used as palettes, are dutiable under that paragraph (195).

United States Court of Customs Appeals, November 22, 1911.

APPEAL from Board of United States General Appraisers, Abstract 24807 (T. D. 31300).

[Decision affirmed.]

Brown & Gerry, for appellants.

Wm. K. Payne, Deputy Assistant Attorney General (*Thos. J. Doherty* on the brief), for the United States.

Before MONTGOMERY, SMITH, BARBER, and MARTIN, Judges.

MARTIN, Judge, delivered the opinion of the court:

The merchandise involved in this case consists of shallow lacquered metal boxes, with hinged lids. The interior of each box is subdivided into separate spaces or compartments by ridges which are stamped into the metal. The boxes are used as containers for water-color paints in the form of small cakes and in tubes, and also for paintbrushes, all of which are fitted into the several compartments just mentioned. The merchandise entered under the act of 1909, and when imported the boxes were filled with the paints and paintbrushes for which they were adapted.

The collector assessed the paints contained in the packages at 30 per cent ad valorem under paragraph 56 of the act, and no objection was made to this ruling.

The boxes were at the same time classified under paragraph 195 as metal lacquered, and were assessed with duty at 4 cents per pound and 35 per cent ad valorem. To this ruling the importers filed their protest, claiming that the boxes were not separately dutiable within the meaning of paragraph 195, but were properly subject to ad valorem duty as part of the value of their contents, in accordance

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with subsection 18 of section 28, as the usual coverings or containers of merchandise dutiable at an ad valorem rate.

This protest was duly heard by the Board of General Appraisers and was overruled. The appellants now pray for a reversal of this decision.

The following is a copy of the pertinent part of paragraph 195, under which the articles were assessed, and also of subsection 18 of paragraph 28, under which appellants claim assessment:

195. Cans, boxes, packages, and other containers of all kinds (except such as are hermetically sealed by soldering or otherwise), composed wholly or in chief value of metal lacquered or printed by any process of lithography whatever, if filled or unfilled, and whether their contents be dutiable or free, four cents per pound and thirty-five per centum ad valorem. * * *

SEC. 28 (subsection 18). That whenever imported merchandise is subject to an ad valorem rate of duty, or to a duty based upon or regulated in any manner by the value thereof, the duty shall be assessed upon the actual market value or wholesale price thereof, at the time of exportation to the United States, in the principal markets of the country from whence exported; * * * including the value of all cartons, cases, crates, boxes, sacks, casks, barrels, hogsheads, bottles, jars, demijohns, carboys, and other containers or coverings, whether holding liquids or solids, * * * and if there be used for covering or holding imported merchandise, whether dutiable or free, any unusual article or form designed for use otherwise than in the bona fide transportation of such merchandise to the United States, additional duty shall be levied and collected upon such material or article at the rate to which the same would be subjected if separately imported. * * *

Under the foregoing paragraphs a general provision for containers of ad valorem importations is made by the terms of subsection 18, whereas by the more specific terms of paragraph 195 a certain kind of containers is withdrawn from the general classification and subjected to a separate rate of duty. The special class thus created consists of "cans, boxes, packages, and other containers of all kinds, * * * composed wholly or in chief value of metal lacquered, * * * if filled or unfilled, and whether their contents be dutiable or free." The description of the articles in question as given above seems of itself effective to place them within the terms of this special classification. They are certainly cans, boxes, packages, or other containers, and they are concededly composed of lacquered metal.

These facts seem to bring them directly and unmistakably within the classification of paragraph 195.

However, it is contended by appellants that these articles are more than mere containers, that they are also palettes, and that they can not therefore be properly classified under paragraph 195, which, they maintain, is intended to include only such containers as are coverings alone and serve no additional purpose in relation to their contents. It is true that the metal lids of the boxes in question are made in concave compartments and that these may be used, and doubtless are commonly used, as bowls within which the colors may

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be mixed or the paints placed while the articles are in use. And it is also true that the boxes and contents are obviously designed to be thus used together until the paints are fully consumed. These facts, however, do not imply that the coverings in question are any the less containers of their contents within the meaning of paragraph 195. The use of the lids as palettes is incidental only and does not change the character of the article as essentially a container for the paints and brushes.

By the terms of paragraph 195 such articles are expressly made dutiable at the same rate whether they be filled or unfilled, and whether their contents be dutiable or free. This is the paragraph therefore which would control the articles if they entered unfilled or filled with undutiable contents, and the provisions of the paragraph expressly determine that even if filled with dutiable contents they shall nevertheless fall within the separate classification.

In support of this view it may be noted that appellants themselves indeed contend that the articles in question are the usual containers of the paints and brushes which are their contents, and that this statement is contained in their original protest. Their contention is that the articles should be assessed ad valorem as part of the value of their contents under that provision of subsection 18 which provides for such assessment upon the usual containers of ad valorem merchandise. That subsection furthermore provides, as appears above, that if there be used for covering or holding imported merchandise any unusual article or form designed for use otherwise than in the bona fide transportation of such merchandise to the United States, additional duty shall be levied upon such article at the rate at which the same would be subjected if separately imported. The appellants maintain that the articles in question do not come within this latter provision for unusual containers, because, they maintain, these coverings are not unusual, but to the contrary are the usual containers for their contents.

The claim of the appellants on the one hand therefore is that the articles in question are not containers within the meaning of that word as used in paragraph 195, because of their added character as palettes, but on the other hand that they are containers within the meaning of the same word as used in subsection 18, notwithstanding their added character as palettes; and, furthermore, that they are even usual containers in contradistinction to unusual ones, such as are separately provided for in the subsection.

This leads to an involved construction, which does not seem to be consistent with the plain language of the enactment.

In this view of the case the decision of the board is approved and *affirmed.*

De Vries, Judge, did not sit in this case.

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(T. D. 32041.)

Metal-coated paper.

KUPFER BROS. *v.* UNITED STATES (No. 641).

1. ADMINISTRATIVE CONSTRUCTION.

It is a well-established rule that where statutory language has been given a long-continued administrative construction, and there is a reenactment of the statute in substantially the same language, it is presumed the administrative construction was adopted.

2. PAPER, PLAIN OR SURFACED, AND METAL COATED.

Reviewing the history of the relevant clause in tariff act of 1909 and the construction given to the previous acts, paper, whether plain or surfaced to be coated, metal coated, is found to be dutiable under paragraph 411 of that act as "papers with coated surface or surfaces * * * if wholly or partly covered with metal or its substitutes" at 5 cents per pound and 20 per cent ad valorem.

United States Court of Customs Appeals, November 22, 1911.

APPEAL from Board of United States General Appraisers, G. A. 7169 (T. D. 31298).

[Decision affirmed.]

Brown & Gerry and *Comstock & Washburn* for appellants.

Wm. K. Payne, Deputy Assistant Attorney General (*Martin T. Baldwin* on the brief) for the United States.

Before MONTGOMERY, SMITH, BARBER, and MARTIN, Judges.

MONTGOMERY, Presiding Judge, delivered the opinion of the court:

The merchandise in question consists of plain paper which has been coated with metal. A portion of the paper is produced by applying a metal wash to a plain paper. The remainder is produced by pasting metal leaf upon a plain paper, with a subcoating applied for the purpose of causing adhesion of the metal when put on. No other distinction need be pointed out between the two classes of paper, as in the view we take of the case both are alike dutiable as assessed.

The importation was assessed as paper coated with metal at 5 cents per pound and 20 per cent ad valorem under paragraph 411 of the tariff act of 1909. The pertinent provisions of this paragraph are as follows:

411. Papers with coated surface or surfaces, not specially provided for in this section, five cents per pound; if wholly or partly covered with metal or its solutions (except as hereinafter provided), or with gelatin or flock, or if embossed or printed, five cents per pound and twenty per centum ad valorem; papers, including wrapping paper, with the surface decorated or covered with a design, fancy effect, pattern or character, whether produced in the pulp or otherwise, but not by lithographic process, four and one-half cents per pound; if embossed, or wholly or partly covered with metal or its solutions, or with gelatin or flock, five cents per pound and twenty per centum ad valorem: *Provided*, That paper wholly or partly covered with metal or its solutions, and weighing less than fifteen pounds per ream of four hundred and eighty sheets, on a basis of twenty by twenty-five inches, shall pay a duty of five cents per pound and twenty-five per centum ad valorem. * * *

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The contention of the importer is that the words "if wholly or partly covered with metal or its solutions," which appear in the second clause of the paragraph quoted, are to be referred to the preceding words "paper with coated surface or surfaces," and that unless the paper has been given a previous coating the fact that it is coated with metal does not bring it within the terms of this second clause. In other words, that to make metal-coated paper dutiable under this clause it must appear that the metal coating is imposed upon a previously surface-coated paper.

The Government, on the other hand, contends that the qualifying words "if partly or wholly covered with metal or its solutions" apply to all papers, and that it is sufficient to show that the paper is covered with metal or its solutions.

The history of this provision is as follows: Paragraph 420 of the tariff act of 1890 imposed a duty of 35 per cent ad valorem on papers known commercially as surface-coated papers and manufactures thereof. This paragraph was interpreted by the Board of General Appraisers as including paper whose coating consisted of metal or of metal leaf. In the matter of Louis Dejonge & Co., G. A. 1125 (T. D. 12353), and in the matter of L. Heller & Co., G. A. 1389 (T. D. 12793).

In 1894 the provision was embodied in paragraph 308 and covered surface-coated papers and manufactures thereof.

In the matter of the protest of the Graham Paper Co., G. A., 4025 (T. D. 18627), the Board of General Appraisers held that a paper coated with a composition called "argentine," consisting of tin, lead, and other metals, fell within this paragraph.

In the act of 1897, paragraph 398 read as follows:

> Surface-coated papers not specially provided for in this act, two and one-half cents per pound and fifteen per centum ad valorem; if printed, or wholly or partly covered with metal or its solutions, or with gelatin or flock, three cents per pound and twenty per centum ad valorem. * * *

This paragraph, it will be noted, introduced the higher rate of duty on metal-coated paper. Under this statute, papers like those here involved were by the Treasury Department in actual practice treated as metal-coated papers and assessed for the higher rate of duty, and this practice continued during the entire period that the tariff act of 1897 was in force, and no distinction was made because of the presence or absence of a coating placed upon the paper before the metal was applied. No question of the validity of assessments under this paragraph was ever raised before the board, so far as we have been able to ascertain, and in the opinion of the board in the present case it is suggested that the contention now raised by the importers was never seriously urged under the life of the old act.

The present act of 1909 is not essentially different from that of 1897.

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It is said by the importer:

The second clause of paragraph 411 specifies four separate qualifications:
1. Metal coated.
2. Gelatin or flock coated.
3. Embossed.
4. Printed.

It would seem self-evident that whatever any of these qualifications may relate to, whether it be paper or surface-coated paper, they must all be held to relate to the same thing. It can not be maintained that the provision for embossed paper relates to embossed surface-coated paper while the provision for printed paper relates to plain printed paper or vice versa, or that the provision for metal-coated paper includes a plain paper metal coated, whereas the provisions for embossed and printed papers are limited to embossed or printed surface-coated papers.

At first blush there would appear to be considerable force in this contention, but keeping in mind the history of the legislation we are to look at the language employed to see if we can gather a true meaning consistent with that given to substantially similar language by the administrative department during the time that the act of 1897 was in force. For it will be noted, with reference to this question, that it would be difficult to point a distinction between the two acts.

Undoubtedly all the provisions of the second clause of paragraph 411 here in question relate to paper with a coated surface or surfaces, and, undoubtedly, in order to bring embossed paper or printed paper within the provisions of the second paragraph, such paper must be surface coated. And so it may be said of metal-coated paper or paper coated with gelatin or flock, that it must likewise be surface-coated paper. But we think it does not follow from this concession that it must be paper coated previously to the operation of being covered with metal or its solutions or with gelatin or flock. The second clause of this paragraph may be construed as referring to surface-coated paper and should be construed as if the language employed were as follows: "If wholly or partly covered with (*i. e.*, if the coating of such surface-coated paper consists of) metal or its solutions, or with gelatin or flock (*i. e.*, if the coating of such surface-coated paper consists of gelatin or flock), or if (such surface-coated paper be) embossed or printed."

This interpretation does no violence to the language employed and results in giving effect to what we believe was the manifest intention of Congress. It also gives force to the well-established rule that where statutory language has been given a long-continued administrative construction a reenactment of the statute in substantially the same language is presumed to have adopted the interpretation thus given.

One further point is urged, and that is that if the interpretation indicated be given this act, the language occurring in later clauses—

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"papers, including wrapping paper, with the surface decorated or covered with a design, fancy effect, pattern, or character, whether produced in the pulp or otherwise, but not by lithographic process, four and one-half cents per pound; if embossed, or wholly or partly covered with metal or its solutions, or with gelatin or flock, five cents per pound and twenty per centum ad valorem"—is unnecessary and redundant. It may be conceded that this language was unnecessary. The reason for its introduction, however, is not difficult to ascertain. The section was dealing with papers which had been given a somewhat lower rate of duty than that included in the first and second clauses of the paragraph. This language may have been employed for the purpose of making it clear that, even though papers should fall within the class providing for the lower rate, yet it was not the intent that (if such papers were embossed or wholly or partly covered with metal or its solutions, or with gelatin or flock) therefore the lower rate should prevail; and the higher rate was reasserted. But if we assume that the clause is redundant and wholly unnecessary for any purpose, we think the language employed in the second clause, in view of the history of the legislation upon the subject and the construction given to the previous acts, leaves no uncertainty as to the intent of Congress.

The board held this importation dutiable, as falling under the second clause of the paragraph, and in so holding committed no error. The decision of the board will be *affirmed*.

De Vries, Judge, did not sit in this case.

(T. D. 32042.)

Circular zinc boxes—"Blanco."

Circular zinc boxes used as the containers of "blanco" not dutiable under paragraph 151, but as usual containers under subsection 18 of section 28, tariff act of 1909.

Treasury Department, *November 27, 1911.*

Sir: I have to acknowledge the receipt of your letter of the 10th instant, further in relation to the classification of the circular zinc boxes used as the containers of "blanco."

It appears that there is a difference of opinion as well as a variance in practice in the classification of these containers. In your letter of July 27, 1911, upon the subject you state that you treat these zinc boxes as the usual containers of the "blanco," and in the assessment of duty upon the merchandise you include the value of the boxes in the value of the "blanco," and as it is the practice at some ports to assess duty upon the zinc boxes at the rate of 30 per cent ad valorem under paragraph 151 of the tariff act, you request that instructions be issued upon the subject to the end that there may be uniformity of practice in regard to the classification of these boxes.

Following the principle announced in the decision of the United States Court of Customs Appeals in T. D. 31577, that the provision

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in paragraph 151 for cylindrical or tubular tanks or vessels refers to the vessels to which the attention of Congress was directed, and which were large size, strongly built cylindrical or tubular metal tanks or vessels for holding gas, and possibly liquid gases, and had no application to cylindrical metal boxes or cans that do not enter into or become a part of the trade and commerce of this country or compete with like articles manufactured in this country, the department is of the opinion that the circular zinc boxes under consideration are not subject to duty under paragraph 151, notwithstanding they are more valuable than the contents, and attention is invited in this connection to the decision of the customs court, T. D. 31596, wherein it was held that certain cylindrical iron drums which were more valuable than their contents were not dutiable under paragraph 151.

The department is in receipt of reports from various collectors from which it appears that "blanco" has been imported for the past 10 years in these circular zinc boxes, and while it is also imported in cardboard boxes and in bulk as "refills," the department is of the opinion that they are none the less the usual and ordinary coverings of this merchandise, and the fact that they may be subsequently used as the containers of the "refills" would not subject them to the additional duty provided in subsection 18 of section 28 of the tariff act for unusual coverings, as it has been repeatedly held that two conditions must obtain to subject containers to duty as unusual coverings. First, they must be of some unusual material, or in some unusual form or shape, so as to constitute an article not ordinarily used for the transportation of like merchandise; and, secondly, they must be of such a nature that they are designed for use otherwise than in the bona fide transportation of such merchandise, and that failing in either of these conditions they are not subject to duty as unusual coverings. In view of the foregoing, the practice at your port in treating these boxes as usual coverings under the provisions of subsection 18 of section 28 of the tariff act is approved.

Respectfully, JAMES F. CURTIS,
(89949.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Philadelphia, Pa.*

(T. D. 32043.)

Holidays.

Specifying what days shall be included in the term "holidays" as used in the act of February 13, 1911, relative to the lading and unlading of vessels under preliminary entry, etc.

TREASURY DEPARTMENT, *November 29, 1911.*

SIR: The department duly received your letter of June 17 last relative to compensation allowed to customs inspectors for supervising the discharge of cargo under the provisions of the act of February 13, 1911, and T. D. 31562 of May 8, 1911.

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You state that it has been the practice at New Orleans for many years for vessels to discharge cargo on nearly all State holidays and occasionally on Sundays and national holidays; that since the receipt of the regulations prescribed in T. D. 31562 you have found it necessary, in justice to the practice which had prevailed theretofore and to the end that the provisions that extra compensation for services of customs officers might not be taken advantage of, to issue instructions in the matter, a copy of which you submit.

These instructions lay down the rule that the word "holiday" as used in the regulations shall include only national holidays, and that in case the work of discharging a vessel commences at any time before 11 o'clock p. m. and continues until a few minutes after that hour the customs officers shall be entitled to only one full day's pay and not to an additional day's pay for the few minutes' service after said hour. Likewise, no work shall be commenced by customs officers at a few minutes before 7 o'clock in the morning and charged for unless by special request of the importer.

Objection has been made to the application of the rules in question, and you inquire whether extra compensation shall be allowed to customs officers for services on days which are holidays under the State laws, but which are not generally observed in business circles, and whether the inspectors are entitled to a full day's pay for a short period after 11 o'clock p. m. or before 7 o'clock a. m.

In reply, I have to advise you that the department is of the opinion that the term "holiday," as used in the act of February 13, 1911, must be construed to include only such days as Congress has by its own enactments or resolutions made such, and that customs officers performing services under the provisions of said act are entitled to extra compensation only on the days designated by Congress as holidays.

By a joint resolution of January 6, 1885 (23 Stat., p. 516), January 1, February 22, July 4, December 25, and such other days as may be designated by the President are made Federal holidays. By joint resolution of February 23, 1887 (24 Stat., p. 644), Memorial, or Decoration, Day is made a Federal holiday. By the act of June 28, 1894 (28 Stat., p. 96), the first Monday in September in each year, designated as labor's holiday, is made a legal public holiday.

The department is further of the opinion that the inspectors are not entitled to a full day's pay for a few minutes' service rendered after 11 o'clock at night or before 7 o'clock in the morning unless such services are specially requested by the parties in interest.

The inclosures of your letter are herewith returned.

Respectfully, JAMES F. CURTIS,
(43444.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New Orleans, La.*

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(T. D. 32044.)

Examination of tea.

T. D. 31920 of October 16, 1911, amended to require use of 100 grams in making analysis.

TREASURY DEPARTMENT, *December 5, 1911.*

To collectors and other officers of customs:

Referring to the department's instructions of October 16, 1911, directing the method to be used in ascertaining artificial coloring and facing matter in tea (T. D. 31920), in which it is stated that "from 50 to 100 grams of tea, preferably the latter amount," should be used in the analysis, the department desires that 100 grams shall be used in all cases.

The department further desires that the method outlined in the said decision shall continue to be strictly enforced and that special care shall be taken by the examining officers in the analyses for detecting not only artificial coloring matter but also for detecting artificial facing matter. You will be governed accordingly.

JAMES F. CURTIS, *Assistant Secretary.*

(T. D. 32045—G. A. 7303.)

Fringes in chief value of beads.

1. FRINGES IN CHIEF VALUE OF BEADS.

Fringes composed of glass beads attached to a narrow strip of material made of artificial silk and cotton, glass beads being the component material of chief value and artificial silk the material next in value, are dutiable at the rate of 60 per cent ad valorem under paragraph 421, tariff act of 1909, as fringes in chief value of beads when it appears that the duty on the merchandise under that paragraph is greater than the duty would be on the merchandise if imported without the beads.

2. SAME—SCOPE OF PROVISO TO PARAGRAPH 421.

Paragraph 421, tariff act of 1909, contains a proviso "that no article composed wholly or in chief value of beads or spangles made of glass, paste, gelatin, metal, or other material shall pay duty at a less rate than is imposed in any paragraph of this section upon such articles without such beads or spangles." *Held*, that the proviso becomes operative only when it appears that the duty on the merchandise with the beads removed would be greater than the duty provided in the paragraph for the articles when imported with the beads attached.—United States *v.* Vietor & Achelis (1 Ct. Cust. Appls., 297; T. D. 31355).

United States General Appraisers, New York, November 27, 1911.

In the matter of protests 459393, etc., of Ewing & Clancey against the assessment of duty by the collector of customs at the port of New York.

Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers).

HOWELL, *General Appraiser:* The merchandise consists of heavily beaded fringes composed of glass beads attached to a narrow strip of material made of artificial silk and cotton. The component material

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of chief value in the fringes is beads, while the material next in value is artificial silk. It is conceded that the value of the loose beads before they are strung and attached to the strip of artificial silk and cotton is 75 per cent of the total value of the materials entering into the fringes, leaving to artificial silk and cotton the remaining 25 per cent. An inspection of the samples shows, we think, that the excess of beads in weight over artificial silk must be even greater than their preponderance in value. By virtue of the proviso to paragraph 421, tariff act of 1909, these fringes were assessed for duty at the rate of 45 cents per pound and 60 per cent ad valorem under paragraph 405. The importers claim that the goods are dutiable as fringes composed in chief value of beads at the rate of 60 per cent ad valorem under said paragraph 421. The two paragraphs in question, so far as pertinent, are as follows:

405. * * * Braids, laces, embroideries, galloons, neck rufflings, ruchings, fringes, trimmings, beltings, cords, tassels, ribbons, or other articles or fabrics composed wholly or in chief value of yarns, threads, filaments, or fibers of artificial or imitation silk or of artificial or imitation horsehair, by whatever name known, and by whatever process made, forty-five cents per pound, and in addition thereto, sixty per centum ad valorem.

421. Beads and spangles of all kinds, including imitation pearl beads, not threaded or strung, or strung loosely on thread for facility in transportation only, thirty-five per centum ad valorem; fabrics, nets or nettings, laces, embroideries, galloons, wearing apparel, ornaments, trimmings, curtains, fringes, and other articles not specially provided for in this section, composed wholly or in chief value of beads or spangles made of glass or paste, gelatin, metal, or other material, but not in part of wool, sixty per centum ad valorem: *Provided*, That no article composed wholly or in chief value of beads or spangles made of glass, paste, gelatin, metal, or other material, shall pay duty at a less rate than is imposed in any paragraph of this section upon such articles without such beads or spangles.

The collector, in assessing duty, figured the rate of 45 cents per pound and 60 per cent ad valorem upon the whole weight and value of the merchandise. The importers admit that because of the proviso to paragraph 421 it is necessary to make reference to paragraph 405 to ascertain what the rate would be under that paragraph on these goods if imported without the beads. They claim, however, that in making the comparison the compound rate provided by the paragraph should be figured upon the merchandise stripped of its beads, and only in case the result of the calculation so made proves to be higher than 60 per cent ad valorem on the whole article under paragraph 421, would the articles be dutiable as assessed. In passing upon a similar claim in G. A. 7226 (T. D. 31648), we said:

The proviso to this paragraph [421] is similar to the second proviso found in paragraph 402, which we had occasion to consider in Vietor's case, G. A. 6979 (T. D. 30337). In that case we held that under the proviso fixing a minimum rate of duty on appliquéd fabrics, which should be not less than that imposed upon the material if not appliquéd, it was necessary to ascertain what the rate of duty would be on the fabric if imported

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without the appliqué, and that the proviso was operative, only when it appeared that the duty on the fabric with the appliqué removed was greater than the duty provided for appliquéd articles in paragraph 402. On appeal this decision was affirmed by the Court of Customs Appeals (T. D. 31355).

We think that a like ruling is applicable to the proviso to paragraph 421, and that this proviso becomes operative only when it appears that the duty on the merchandise, if imported without the beads, would be greater than the duty provided in the paragraph for the articles when imported with the beads attached.

In that case, however, the board was obliged to overrule the protest, on the ground that the claim was not distinctly set forth in the protest, as required by the statute. No appeal was prosecuted from that decision, and the Government now asks us to review the question, urging that there is no article of the character referred to in paragraph 421, which, when stripped of the beads, would pay a higher amount of duty than 60 per cent ad valorem on the completed article, and that, therefore, the only way this proviso can be given any practical effect is to construe it literally, and hold that its reference to the "rate" of duty "imposed in any paragraph of this section" means that resort is only to be had to other paragraphs to determine the minimum rate of duty and not the minimum amount of duty.

A similar contention made by the Government with respect to a like proviso found in paragraph 402, relating to appliquéd articles, was held to be untenable by the Court of Customs Appeals in the case of United States *v.* Vietor (1 Ct. Cust. Appls., 297; T. D. 31355), affirming *In re* Vietor, G. A., 6979 (T. D. 30337), and we think the decision in that case is controlling here. The court there refused to accept the Government's view that the phrase "rate of duty," as used in the proviso to paragraph 402, meant something other than amount of duty. The court said in part:

But we think it clear that the imposition intended was the ad valorem rate provided in section 402, and that the only purpose of comparison with paragraph 399 was to enable the collector to determine that the tax which would be levied under paragraph 399 does not in its aggregate, as imposed upon the material, stripped of the appliqué, exceed the imposition resulting from the rate of 60 per cent ad valorem, which was the rate in the contemplation of Congress and fixed by section 402 as a standard.

The purpose of the proviso to paragraph 402 was to prevent the importation of an appliquéd fabric or article at a less rate of duty than that levied on a similar fabric or article not so appliquéd. We think a like purpose was sought to be accomplished by the proviso to paragraph 421, so far as beaded articles are concerned. Congress sought by this proviso to make certain that the 60 per cent rate fixed by the paragraph should in no case be a less rate than that imposed upon similar articles when imported not beaded. The language of the proviso is negative, and to support the Government's view it is necessary to extend its operation by implication "beyond the clear import of the language used," and hold that the negative language

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is equivalent to an affirmative enactment imposing a duty. This would be contrary to the rule of construction that a negative will not be given the force of an affirmative if there is a definite field for its operation. In commenting upon this rule in United States *v.* Matagrin (1 Ct. Cust. Appls., 309; T. D. 31406) the court said in part:

> It is true that the authorities cited hold that where the intent is clear negative words may be given the force of affirmative enactment. We think, however, that it is not too narrow a construction of this rule to hold that the negative language will not be given such effect if it can be given force as saving from the operation of what precedes such negative language an enactment which would but for its use be abrogated or modified.

The negative language employed in this proviso has an office to perform in protecting other provisions of the statute, so that articles which would be dutiable thereunder when imported without beads may not escape the operation of such provisions and pay a less rate of duty by reason of the fact that they are beaded.

In this case the record clearly shows that the rate of 60 per cent ad valorem upon the fringes in their completed state is far greater than the rate of 45 cents per pound and 60 per cent ad valorem upon the fringes stripped of the beads. We accordingly sustain the claim in the protests that the goods marked "B" on invoice 9978, protest 459393, and those marked "A" on invoice 21112, protest 466943, are dutiable at 60 per cent ad valorem under paragraph 421.

The entries will be reliquidated accordingly.

(T. D. 32046.)

Abstracts of decisions of the Board of General Appraisers.

Board 1.—Sharretts, McClelland, and Chamberlain. *Board 2.*—Fischer, Howell, and Cooper. *Board 3.*—Waite, Somerville, and Hay.

BEFORE BOARD 1, NOVEMBER 27, 1911.

No. 27209.—UMBRELLA STANDS.—Protest 481631 of Morimura Bros. (New York) Opinion by McClelland, G. A.

Umbrella stands inadvertently classified as baskets of wood under paragraph 214, tariff act of 1909, were held dutiable as manufactures in chief value of wood (par. 215). Protest sustained.

No. 27210.—FRUIT OIL—ESSENTIAL OIL.—Protests 461814, etc., of W. J. Bush & Co. et al. (New York). Opinion by McClelland, G. A.

Merchandise classified as fruit oil under paragraph 21, tariff act of 1909, was held dutiable as essential oil (par. 3). Protests sustained on the authority of G. A. 7239 (T. D. 31718).

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No. 27211.—Willow Baskets—Parts of Toys.—Protest 516635-3802 of George W. Rueff (New Orleans), protests 430027, etc., of Basket Importing Co., and protest 514573 of A. A. Vantine & Co. (New York), protest 417104 of O. G. Hempstead & Son (Philadelphia), protest 520906 of George S. Bush & Co. (Portland, Oreg.), and protest 518459 of Fuyo Co. (San Francisco). Opinions by McClelland, G. A.

The protests related to baskets and doll-carriage bodies of willow classified as manufactures of willow under paragraph 212, tariff act of 1909, and held dutiable, respectively, as willow baskets (par. 214) and parts of toys (par. 431). Note Brody *v.* United States (T. D. 31573).

No. 27212.—Protests Overruled.—Protest 514152 of William H. Masson (Baltimore), protest 436891 of Morimura Bros. (Boston), protests 513225, etc., of F. W. Myers & Co. (Burlington), protest 408490-31722 of A. Hoenigsberger, and protests 504820-37878, etc., of G. W. Sheldon & Co. et al. (Chicago), protests 504838, etc., of Corl, Knott & Co. (Grand Rapids), protests 497559, etc., of J. W. Barton et al. (Philadelphia), protests 515829, etc., of Union Bag & Paper Co. et al. (Plattsburg), and protests 425979, etc., of Morimura Bros. et al. (San Francisco). Opinions by McClelland, G. A.

Protests overruled for want of merit.

Before Board 2, November 27, 1911.

No. 27213.—Manganese Metal—Ferromanganese.—Protests 418269, etc., of Goldschmidt Thermit Co. (New York).

Fischer, *General Appraiser:* The merchandise is a metal substance invoiced as "ferromanganese," and its foreign value is given at 4 marks per kilo. The collector assessed duty thereon at 20 per cent ad valorem under paragraph 183, tariff act of 1909, as "metals unwrought, not specially provided for," and the importers claim that the said metal is dutiable properly at $2.50 per ton under paragraph 118 of said act as "ferromanganese."

The ferroalloy we have here contains a high percentage of manganese, a very small proportion of iron, and is practically clear of carbon. It is claimed to be ferromanganese, which is, as ordinarily dealt in and as here testified to, a blast-furnace product. The ferroalloys increase in value as the percentage of the valuable element which they contain increases, and from the cheapest blast-furnace ferromanganese to the most expensive electric-furnace manganese there is a variation of from about $35 per ton to over $1,000 per ton.

Our inquiry in these cases is to determine to what definite alloy of iron and manganese Congress referred when it provided in paragraph 118 that ferromanganese shall pay duty at $2.50 per ton. The term, if it is to receive its etymological meaning, must be understood as applicable to metals made up of a combination of iron and manganese. The record satisfies us that the term must be considered in a mercantile sense, and that every combination of iron and manganese is not necessarily considered by dealers in ferroalloys as "ferromanganese." It would appear from the record that the ordinary or standard alloy of this kind contains 80 per cent of manganese and about 6 or 7 per cent of carbon, and that such alloy may run from 78 to 85 per cent in manganese. The record, on the whole, would support the contention that the term "ferromanganese" has a special trade meaning, settled by uniform and established custom, which requires acceptance of only such ferroalloys as "ferromanganese" as are of low grade and low content of the metal alloyed with the base metal iron and such as are the product of blast furnaces. The high-grade electric-furnace product is much more valuable on account of its high content of manganese, the fact that it is relatively

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free of carbon, and the further fact that when so cleared from impurities it is a commercially pure metal. Manganese metal may be obtained only relatively free from impurities, and the elimination of such impurities produces the commercially pure manganese. When the alloy contains so low a per cent of iron and so high a content of manganese as the analyses of the merchandise show in these cases, we are warranted in concluding from the testimony offered that the said alloy is not a ferromanganese, but a manganese metal, and we so hold.

The protests are overruled, and the decision of the collector is hereby affirmed.

No. 27214.—Protests Overruled.—Protests 380924, etc., of American Express Co. et al. (Boston), protest 466674 of Strouse, Adler & Co. (New Haven), protests 495121–3751, etc., of Illinois Central Railroad Co. (New Orleans), and protests 172088,etc., of W. Schade & Co. et al. (St. Louis). Opinions by Fischer, G. A.

Protests overruled for want of merit.

Before Board 3, November 27, 1911.

No. 27215.—Metal Statuary.—Protest 371770 of R. J. Goodwin's Sons (New York).

Waite, *General Appraiser:* The articles in question in this case consist of metal or bronze statuettes with their marble bases, and also bas-reliefs in bronze. The goods were imported under the law of 1897 and were assessed under paragraphs 193 and 115 as manufactures of metal and marble, respectively. They are claimed to be dutiable under paragraph 454 as statuary as therein defined.

Considerable testimony has been taken in this case, it being given by the artist who produced the pieces, from which it appears that the importation is made by the same importer and that the articles were produced in the same way as those before the board in Del Nero's case, G. A. 6346 (T. D. 27302). We think under the ruling in that case that the statuettes and the bases made expressly for the same are dutiable under paragraph 454 as statuary. The bas-reliefs not being before us, we are unable to determine from the testimony that they are sufficiently "in the round" to entitle them to classification as statuary under the decisions heretofore rendered, which distinguish relief work from statuary. See G. A. 5225 (T. D. 24048). * * *

No. 27216.—Protests Overruled.—Protests 506381, etc., of Amsberger & Son et al., protests 506839, etc., of Copland-Raymond Co. et al., protests 505108, etc., of V. La Sala et al., and protest 417902 of Park & Tilford (New York), protests 469085, etc., of Gulf Transit Co. (Pensacola), protest 491625 of E. Bers & Co. (Philadelphia), and protests 511673, etc., of R. R. Anderson & Co. (Port Townsend). Opinions by Somerville, G. A.

Protests overruled for want of merit.

No. 27217.—Wash-Blue Coverings—Unusual Coverings.—Protest 508997 of Theodore H. Davies & Co. (Honolulu).

Hay, *General Appraiser:* This protest relates to paper boxes containing wash blue. These boxes were returned by the appraiser as unusual coverings and were assessed for duty. The protestants claim that they are free of duty as the usual coverings of merchandise subject to specific duty.

The sample before us is a cardboard box. It has been held that a covering must be both unusual and designed for use otherwise than in the bona fide transportation of its contents to be dutiable as an unusual covering. Though these boxes were returned by the appraiser as "unusual," the sample appears to have been designed only for the bona fide transportation of the wash blue, and it has not been shown that they are used for any other purpose.

The protest is sustained and the collector directed to reliquidate the entry accordingly.

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No. 27218.—Powdered Talc.—Protests 469350, etc., of J. Russell Marble Co. (Boston), and protests 425248–3558, etc., of F. Hindermann et al. (New Orleans). Opinions by Hay, G. A.

Protests sustained as to powdered talc on the authority of Salomon *v.* United States (T. D. 31635).

No. 27219.—Coverings of Specific-Duty and Free Goods.—Protests 396833, etc., of R. Pierson & Co. et al. (St. Louis). Opinion by Hay, G. A.

Paper, cardboard, and pasteboard wrappers or containers of merchandise subject to specific duty or free of duty were held nondutiable, as claimed by the importers. United States *v.* Matagrin (1 Ct. Cust. Appls., 309; T. D. 31406) followed.

No. 27220.—Smokers' Articles.—Protests 451547, etc., of Knauth, Nachod & Kuhne et al. (New York). Opinion by Hay, G. A.

Cigarette and tobacco boxes of metal classified under paragraph 195, tariff act of 1909, as lithographically printed boxes were held dutiable as smokers' articles (par. 475), as claimed by the importers. Cross *v.* United States (1 Ct. Cust. Appls., 377; T. D. 31457) followed.

No. 27221.—Protests Overruled.—Protests 504437–3770, etc., of D. H. Holmes Co. (New Orleans), protests 47756f, etc., of H. S. Beer et al., protests 520084, etc., of C. B. Richard & Co. et al., and protest 519770 of Alfred H. Smith Co. (New York), protest 519892 of W. White (Port Huron), protest 488969 of Ralph Pierson & Co., and protests 418956, etc., of Rice-Stix Dry Goods Co. et al. (St. Louis). Opinions by Hay, G. A.

Protests overruled for want of merit.

Before Board 1, November 29, 1911.

No. 27222.—Chinese Shoes.—Protests 514672, etc., of Chee Chong & Co. et al. (San Francisco). Opinion by McClelland, G. A.

Chinese shoes classified as shoes of leather under paragraph 451, tariff act of 1909, were held dutiable as shoes of leather made from hides of the bovine species (par. 450). Protests sustained.

No. 27223.—Olive Oil in Tins.—Protests 510779, etc., of C. Carmeci & Co. et al. (New York). Opinion by McClelland, G. A.

Protests sustained as to olive oil in 5-gallon tins. Note Abstract 25549 (T. D. 31589).

No. 27224.—Feather Articles.—Protests 395433, etc., of Edward B. Goodman & Co. et al. (New York). Opinion by McClelland, G. A.

Protests sustained as to feather articles in part of metal. United States *v.* Berlinger (167 Fed. Rep., 800; T. D. 29577) followed.

No. 27225.—Apron Leather.—Protests 403023, etc., of John Dunn, jr., & Co. et al. (Philadelphia). Opinion by McClelland, G. A.

Protests sustained as to apron leather on the authority of United States *v.* Richards (1 Ct. Cust. Appls., 537; T. D. 31548).

No. 27226.—Willow Baskets.—Protests 435615, etc., of Jordan-Marsh Co. (Boston), and protests 520006, etc., of A. Hauptman, and protests 514575, etc., of A. A. Vantine & Co. et al. (New York). Opinions by McClelland, G. A.

Protests sustained as to willow baskets. Brody *v.* United States (T. D. 31573) followed.

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No. 27227.—Fur Skins, Dressed—Beaver Strips—Fur Hats.—Protest 514282 of Burby, protests 453180, etc., of J. Friedenberg, and protest 505270 of Pritchard, Verkruzen & Co. et al. (New York). Opinion by McClelland, G. A.

Protests sustained as to furs dressed on the skin, beaver strips, and fur hats or plateaux. Note G. A. 7063 (T. D. 30765), G. A. 7109 (T. D. 30990), and Abstract 26106 (T. D. 31757).

No. 27228.—Protests Overruled.—Protests 492892-36966, etc., of Carson, Pirie, Scott & Co. et al., and protests 332407-28060, etc., of G. W. Sheldon & Co. et al. (Chicago), protests 513732, etc., of H. Chanut et al., protests 442304, etc., of Decorative Plant Co. et al., protests 223682, etc., of Germain, Hoffbauer & Helm Co. et al., protests 483584, etc., of R. F. Lang et al., protests 390208, etc., of Francis H. Leggett & Co. et al., and protests 414133, etc., of Benjamin Stearns et al. (New York), protests 514184, etc., of E. Dillingham (Ogdensburg), protests 382289, etc., of H. Bayersdorfer & Co. et al., protests 444704, etc., of O. G. Hempstead & Son et al., and protests 413205, etc., of Schulte Brothers & Co. et al. (Philadelphia), protest 418013 of Frank P. Dow Co. et al. (Port Townsend), and protests 402690, etc., of C. H. Wyman & Co. et al. (St. Louis). Opinions by McClelland, G. A.

Protests overruled for want of merit.

Before Board 2, November 29, 1911.

No. 27229.—Penwipers—Brushes—Scissors—Wooden Articles Inlaid with Metal.—Protests 409746, etc., of M. Wille et al. (New York).

Fischer, *General Appraiser:* There are three classes of merchandise here in question: (1) Penwipers made of a metal base or stand in which a collection of bristles is fastened; (2) scissors in metal cases; and (3) articles of wood and metal inlaid, or so-called intarsia. The collector assessed duty on all of said articles at 45 per cent ad valorem under the provisions of paragraph 199, tariff act of 1909, or paragraph 193, tariff act of 1897, as articles in chief value of metal, not specially provided for.

It is claimed that penwipers of the kind here described are dutiable properly at 40 per cent ad valorem, under paragraph 423, as "brushes." The bristles fastened in a metal base or stand are invoiced as, and are in fact, "penwipers." The only testimony offered was for the purpose of proving the genuineness of the exhibits introduced on the trial. There is no proof to show that the articles are uniformly and generally known or recognized as "brushes" in trade and commerce, and we find that they are not so in fact.

The scissors in metal cases, as shown by the special reports, should have been returned for duty at appropriate rates under paragraph 152, and we so hold.

The inlaid articles of wood and metal are made of expensive woods cut in ornamental designs in which pieces of metal are set, having been cut to fit the fancy patterns or designs. In some instances these articles have metal handles, feet, corners, edges, etc. The uncontradicted testimony is to the effect that the wood in such articles is the component material of chief value, and we accordingly so find. The claim in the protests that the merchandise is dutiable at 35 per cent ad valorem either under paragraph 215, tariff act of 1909, or paragraph 208, tariff act of 1897, must accordingly be sustained as to the said inlaid articles. * * *

No. 27230.—Press Mats—Hair Press Cloth.—Protest 526777 of Robert B. Ways (Baltimore). Opinion by Fischer, G. A.

Press mats 50 inches long and 15 inches wide, made of common goat hair and having iron or steel rods about 20 inches in length looped through each end, which were classified as manufactures of metal under paragraph 199, tariff act of 1909, were claimed to be dutiable as hair press cloth (par. 445). Protest overruled.

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No. 27231.—Malines Nets.—Protest 511633 of Sinclair, Rooney & Co. (Buffalo), and protests 517792, etc., of H. B. Claflin Co. et al. (New York). Opinions by Howell, G. A.

Protests sustained as to Malines nets. Abstract 24701 (T. D. 31255) followed.

No. 27232.—Protests Overruled.—Protest 293644-26563 of Mandel Bros. (Chicago), and protests 208457, etc., of Lichtenstein Millinery Co. et al., protests 468866, etc., of G. A. & E. Meyer et al., protests 513498, etc., of Mills & Gibb et al., protests 474778, etc., of Ryan & McGahan et al., and protests 503645, etc., of Wertheimer Bros. et al. (New York). Opinions by Howell, G. A:

Protests overruled for want of merit.

No. 27233.—Flax Straw.—Protest 492924 of Isaac McNiven (Niagara Falls). Opinion by Cooper, G. A.

Flax which had been cut, the seeds removed, and the straw broken, and which had been neither retted nor combed, was held dutiable as flax straw under paragraph 333, tariff act of 1909, rather than as tow of flax (par. 336). G. A. 4314 (T. D. 20422) followed.

No. 27234.—Cotton Cloth.—Protest 477710 of W. B. Quaintance (New York). Opinion by Cooper, G. A.

Cotton cloth classified as colored under paragraphs 305 and 313, tariff act of 1897, was held dutiable as unbleached cotton cloth under the same paragraphs. Protest sustained.

No. 27235.—Twilled Brattice Cloth.—Protests 472782, etc., of M. J. Corbett & Co. (New York). Opinion by Cooper, G. A.

Twilled brattice cloth classified as manufactures of vegetable fiber under paragraph 358, tariff act of 1909, was claimed to be dutiable as plain woven fabrics of single jute yarns (par. 352). Protests overruled on the authority of G. A. 5035 (T. D. 23386).

No. 27236.—Scalloped Articles—Drawnwork.—Protests 154727, etc., of Campbell, Metzger & Jacobson, protests 197097, etc., of John M. A. Cattus, protests 328563, etc., of Haughton, Lee & Hoyt et al., protests 402856 of Lamb, Finlay & Co., and protests 403281, etc., of Morimura Brothers (New York). Opinions by Cooper, G. A.

Protests sustained as to scalloped articles and drawnwork articles on the authority of G. A. 6966 (T. D. 30271) and G. A. 6993 (T. D. 30442).

No. 27237.—Protests Overruled.—Protests 487787, etc., of Henry Glass & Co., protests 314613, etc., of Hensel, Bruckman & Lorbacher, protest 493383 of S. H. Kahn & Co., and protests 131522, etc., of Syndicate Trading Co. (New York). Opinions by Cooper, G. A.

Protests overruled for want of merit.

Before Board 3, November 29, 1911.

No. 27238.—Protests Overruled.—Protests 219447, etc., of Ernesto Russo et al. (New York). Opinion by Waite, G. A.

Protests overruled for want of merit.

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No. 27239.—Rotten Fruit.—Protest 340184 of A. Courtin Co. (New York). Opinion by Somerville, G. A.

The board sustained a claim for allowance on account of decay in imported fruit.

No. 27240.—Figs in Maraschino—Cherries in Maraschino.—Protests 473745, etc., of Austin, Nichols & Co. et al. (New York). Opinion by Somerville, G. A.

Figs and cherries in maraschino containing from 1 to 1.25 per cent of alcohol, which were classified as "fruits * * * preserved or packed in sugar, * * * spirits, or their own juices, * * * containing not over 10 per cent of alcohol," under paragraph 274, tariff act of 1909, were held dutiable as "edible fruits * * * prepared in any manner" under the same paragraph. United States *v.* Reiss (166 Fed. Rep., 746; T. D. 29507) followed.

No. 27241.—Shortage—Broken Demijohns.—Protest 509167 of Dodge & Olcott Co. (New York).

Somerville, *General Appraiser:* The deputy collector reports in this case as follows:

This importation included 150 demijohns of floral water, of which the discharging officers reported "9 demijohns landed broken and empty." In the liquidation of the entry allowance was made for the floral water, for the reason that it was not landed. In view of the instructions of the department as set forth in T. D. 30816, which preclude any allowance for damage, except on merchandise of a perishable nature and upon which the importer has complied with the requirements of T. D. 30023, construing subsection 22 of section 28, act of August 5, 1909, the 9 broken demijohns were assessed with duty as landed merchandise.

The Government claims that the report of the discharging officers as to the alleged shortage is insufficient without corroboration by the importers. In support of this contention they refer to the case of Hempstead, G. A. 3886 (T. D. 18084). The collector in this case, however, admits that these demijohns were broken and landed empty, and states his reason for not making an allowance. It is not based upon the allegation that they never arrived, but upon certain action of the department. That distinguishes the case to which reference is made in G. A. 3886 (T. D. 18084).

The case falls directly under the decision of the board in the case of Dodge & Olcott, G. A. 6854 (T. D., 29494). Following that decision, the protest is sustained and the collector's decision reversed, with instructions to reliquidate the entry accordingly.

No. 27242.—Protests Overruled.—Protest 497974 of S. S. Pierce Co. (Boston), protest 508366 of P. McGettrick (Burlington), protest 525210 of Hawley & Letzerich (Galveston), protests 475237, etc., of American Hay Co., and protest 507751 of Rockhill & Vietor (New York), and protests 486622, etc., of Post & Co. (Philadelphia). Opinions by Somerville, G. A.

Protests overruled for want of merit.

No. 27243.—Powdered Talc.—Protest 519889 of W. White (Port Huron). Opinion by Hay, G. A.

Protest sustained as to powdered talc. Salomon *v.* United States (T. D. 31635) followed.

No. 27244.—Dried Bitumen.—Protests 465023, etc., of Lunham & Moore (New York). Opinion by Hay, G. A.

Merchandise classified as an unenumerated manufactured article under paragraph 480, tariff act of 1909, was held dutiable as dried bitumen (par. 90). Protests sustained on the authority of United States *v.* Central Westrumite Co.

No. 27245.—Protests Abandoned.—Protests 317255, etc., of G. Di Cola et al. (Boston), and protests 500281, etc., of Sinclair, Rooney & Co. (Buffalo).

Protests abandoned.

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(T. D. 32047.)

Leakage of sake.

PEACOCK & CO. *v.* UNITED STATES (No. 642).

LEAKAGE OF SAKE NONDUTIABLE UNDER TARIFF ACT OF 1897.

The evidence shows apparently that the leakage here occurred before importation. Under paragraph 296, tariff act of 1897, sake was held dutiable by similitude only as still wine; and, further, the provision in that paragraph that no allowance should be made for leakage of wine could be made to apply to this importation only by construction. To apply it by construction is to do violence to an accepted principle of law. The leakage of sake was not dutiable.—United States *v.* Gonsalves (2 Haw. Rep., 354; T. D. 26737).

United States Court of Customs Appeals, November 22, 1911.

APPEAL from Board of United States General Appraisers, Abstract 24628 (T. D. 31236).

[Decision reversed.]

Curie, Smith & Maxwell (*W. Wickham Smith* and *Thomas M. Lane* of counsel) for appellants.

Wm. L. Wemple, Assistant Attorney General (*Charles E. McNabb* on the brief), for the United States.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

MARTIN, Judge, delivered the opinion of the court:

Under the tariff act of 1897 the appellants imported from Kobe to Honolulu 500 casks of sake, which is an intoxicating beverage made from rice by a process somewhat akin to brewing, and which possesses some slight resemblance to still wines.

The United States gauger found that 475 of the imported casks were full to their capacity, that 7 of them were entirely empty, and that 18 of the casks were partly empty. These latter casks had a net capacity of 166 and a fraction gallons, but contained in fact only 81 and a fraction gallons, leaving them 85.1 gallons short of their net capacity, after deducting the 2½ per cent of allowable outage. The invoice failed to state the quantity of sake which was in the casks when they were exported. It has therefore been properly accepted as a fact throughout this litigation that the casks were filled to their capacity at exportation.

The collector classified the importation by similitude with still wines containing more than 14 per cent of absolute alcohol, and assessed the same with duty at 50 cents per gallon under paragraph 296 of the act of 1897.

It appears from the printed record and from the official documents in the case, which are forwarded therewith, that the duty upon the cargo was thereupon liquidated at the rate of 50 cents a gallon, computed upon the actual contents of the casks as ascertained and reported by the gauger. The full casks were assessed upon their

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capacity; the empty casks were not assessed at all; and the partly empty casks were assessed upon the actual contents thereof, which was 85.1 gallons less than their entire capacity.

About three months after this liquidation, however, the collector was directed by the department to reliquidate the entry above stated, in so far as it related to the 18 partly empty casks, by requiring an additional payment from the importers, so as to make the entire payment equal to the duty at 50 cents a gallon computed upon the full capacity of the casks, less only the 2½ per cent of allowable outage. The result of this, of course, was to require payment of duty by the importers upon the 85.1 gallons net shortage in the 18 partly empty casks. Acting upon this authority, the collector reliquidated the entry by requiring the payment of the additional duty required thereby.

The importers duly filed their protest to this order of reliquidation, and contended that the gauger's finding correctly stated the quantity of sake which had reached port, and that duty should therefore be assessed upon that quantity alone and not upon the quantity which had been exported. They contended that the shortage in the 18 casks had resulted from leakage at sea in transit, and that no duty should be collected upon the 85.1 gallons of sake thus actually failing of importation.

This protest was heard by the Board of General Appraisers and was overrruled. The importers now pray for a reversal of that decision of the board.

As has already been noted, the collector classified the imported sake by similitude with still wine under paragraph 296 of the act of 1897 and assessed duty accordingly. This classification is no longer open to controversy; the final word of a long history of litigation upon that subject was spoken by the Supreme Court in the case of Komada *v.* United States (215 U. S., 392). The controversy in this case does not therefore relate to the classification of the importation nor to the rate of duty assessed pursuant thereto, but it relates solely to the quantity upon which the rate of duty should be assessed in the matter of the 18 partly empty casks.

Two questions present themselves as parts of this issue. One relates to the facts and the other to the law. How much sake, according to the record, did actually reach port? And if the quantity which actually reached port was less than the quantity exported because of leakage in transit, should the duty be assessed upon the quantity exported or only upon that part of it which actually reached port?

Taking up the question of fact first, it is conceded that the casks were full when they were shipped at Kobe, and that the only evidence concerning their contents upon importation is that contained in the report of the gauger and the statements in the official docu-

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ments above mentioned in connection therewith. It appears therefrom that when the vessel was unloaded at Honolulu the 18 casks in question were found to be lightweight, and in accordance with instructions from the collector were set aside for the gauger's inspection. The gauger made the inspection and found them to contain the quantities set forth in his report, the only direct evidence of leakage being the varying quantities of liquor found in the various short-weight casks. The gauger filed his report setting out the finding as first above noted. The first liquidation was thereupon made upon the basis of that finding and report.

This evidence is somewhat meager, and yet it seems to be much more consistent with the theory of a loss by leakage before importation than with any other theory. It is a matter of common knowledge that losses do sometimes occur by leakage of liquors from casks while in shipment. It is evident that both the gauger and the collector were satisfied at the time of the first liquidation that such a loss had happened in this case. The matter was then fresh in their attention, and this was the impression made upon their minds by what they saw. The importers must have been then and there given to understand that there was no dispute about the facts. It is apparently conceded even yet that this finding was correct in so far as it related to the 7 casks which were wholly empty. They, too, had been full at exportation, but they were found to be wholly empty when examined by the gauger. Even in the reliquidation subsequently directed no duty was assessed upon the sake which was in these casks when they were exported, evidently because it was still accepted as a fact that their contents had been wholly lost by leakage at sea before they reached port. The same evidence, however, exists concerning the shortage of the 18 partly empty casks. It is true that the leakage in both cases may possibly have occurred after the vessel reached port and before it was unladen, in which event of course the shortage should not be allowed, but it is highly probable that a leakage so recent could have been detected and located as such. Under all the circumstances, therefore, the natural conclusion seems to be that the shortage resulted from leakage which totally emptied some casks and partly emptied others while the consignment was in shipment prior to importation. Furthermore it may be noted that in the direction given by the department to the collector for reliquidation the foregoing question of fact in relation to the contents of the casks at importation was not set out as the basis of the ruling, but only the question of law above suggested. It does not seem to have been denied even then that the leakage in question had occurred before the vessel reached port. The collector was, however, referred to preceding rulings of the department to the effect that no allowance should be made for leakage of sake while in transit, because

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the law prohibited such allowance even if the shortage occurred before importation. The reliquidation as thus directed was not therefore had because of a controversy about the facts in the case, but rather because of the position taken by appellee in its construction of the law as above indicated.

Coming, therefore, to the issue of law involved in the case, it appears that sake was not specially mentioned in the tariff act of 1897, and that it was classified by similitude only as still wine under paragraph 296 of that act. In that paragraph it was expressly provided that no allowance should be made for leakage on wines, liquors, cordials, or distilled spirits. It is contended by the Government that sake, being classified as still wine under the paragraph, was therefore also subject to the express proviso therein contained prohibiting any allowance for the leakage of such wines. It is contended by the importers that the proviso contained in the paragraph does not apply to sake because it relates in terms to actual still wines and does not include sake, which is not actually a still wine but was classified as such by similitude only.

Upon a similar issue of law the Board of General Appraisers announced an opinion in the case of Gonsalves et al., published as G. A. 5690 (T. D. 25332). In that case the board held with the contention of the importers as above set out. The following is part of the syllabus of that decision:

1. Effect of Similitude Clause.

A finding under section 7, tariff act of 1897, that a nonenumerated article is similar, either in material, quality, texture, or use, to an article enumerated in said act does not place such nonenumerated article in the category of the enumerated article which it resembles for all purposes in administration of the law, but only for the purpose of making it subject to the same rate of duty.

2. Sake—Allowance for Shortage—Proviso of Paragraph 296, Tariff Act of 1897.

The proviso in paragraph 296, tariff act of 1897, which requires that "there shall be no constructive or other allowance for breakage, leakage, or damage on wines, liquors, cordials, or distilled spirits," does not apply to Japanese sake, dutiable by similitude at the same rate as still wine under said paragraph 296. An allowance must accordingly be made for sake which never reached the port of importation, having been lost in transit through leakage or other cause.

This decision of the board was affirmed by the District Court for the District of Hawaii in the case of United States *v.* Gonsalves (2 Haw. Rep., 354; T. D. 26737). The department, upon advice of the Attorney General, did not prosecute error to that decision. In the decision of the present case the board still adheres to the view of the law expressed by it in the case just above cited; the present decision of the board overruling the importers' protest is founded wholly upon its conclusion concerning the weight of the evidence upon the question of fact above stated.

The decision of the law question contained in the Gonsalves case commends itself as sound upon reason and authority. It can not be

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contended that sake is in fact a still wine; it was made dutiable as such under the act of 1897 by similitude only. The similitude paragraph of that act provided that every nonenumerated imported article which is similar, either in materials, quality, texture, or the use to which it may be applied, to any article enumerated in the act as chargeable with duty shall pay the same rate of duty which is levied on the article which it most resembles in any of the particulars before mentioned. It is by virtue of this provision that sake was assessed with the same duty as still wines. However, the provisions of the similitude paragraph above referred to do not undertake to place any imposition upon the article affected by it other than the appropriate duty only. The paragraph provides that such similar article shall pay the same rate of duty as that levied upon the dutiable article which it most resembles. There is no provision in the paragraph that such similar articles shall be subject to all the other laws and regulations appertaining to the dutiable article which it so resembles. Therefore, if any burden additional to the appropriate duty is levied upon any article by force of the similitude paragraph it must be done by construction alone. That is, the additional imposition in such case would not be levied because of any express provision of the law in that behalf, but would only be authorized by the general spirit and intendment of the enactment as construed from its terms and the circumstances. If the restrictive proviso therefore contained in paragraph 296 is applied to sake it must be done by such implication or construction only. This would contravene the authoritative principles which are expressed in the following extract from United States *v.* Wigglesworth (28 Fed. Cas., 596):

> It is * * * a general rule in the interpretation of all statutes levying taxes or duties upon subjects or citizens not to extend their provisions by implication beyond the clear import of the language used or to enlarge their operation so as to embrace matters not specifically pointed out, although standing upon a close analogy. In every case, therefore, of doubt such statutes are construed most strongly against the Government and in favor of the subjects or the citizens, because burdens are not to be imposed, nor presumed to be imposed, beyond what the statutes expressly and clearly import.

Under what may be termed the common law of the subject, duty should not be assessed upon such part of an exportation as fails to reach port, the general rule being that such parts of a shipment as are lost at sea before the vessel reaches port do not become an importation. This rule may of course be changed by legislation, and duty may be required from an importation upon its invoice or actual contents at exportation without deduction for losses in transit. It is also true that such an express provision in relation to wines, liquors, cordials, and distilled spirits does appear in paragraph 296 of the act of 1897. But sake does not come properly within any of these classes, for it is not properly either wine, liquor, cordial, or

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distilled spirits. If it were any of these articles, it would have been directly assessed as such. It was assessed with the same duty as wine by similitude only under the provisions of the similitude paragraph. That assessment, however, was not based upon construction only, but upon the express terms of the act; but there are no express terms which subject the article to any imposition other than the duty alone. Therefore, if it is to be taken out of the common law rule in relation to shortage as above noted, it must be taken out by construction and implication alone and not by force of any direct or express provision of the act to that effect. This would virtually be equivalent to levying an assessment upon the article by implication or construction alone.

Therefore, upon the entire record this court holds that as a matter of fact the shortage in the 18 partly empty casks like the shortage in the 7 entirely empty ones resulted from leakage at sea before importation, and as a matter of law, under the tariff act of 1897, such leakage thus occurring at sea before importation should have been deducted from the exported contents of the casks for the assessment of duty.

The decision of the board is therefore *reversed* and reliquidation ordered accordingly.

(T. D. 32048.)

"Planit" packing.

HODGART & CO. *v.* UNITED STATES (No. 661).

PLANIT PACKING FOR ENGINE PACKING AND CALKING PURPOSES.

Tin parings and lead shavings obtained by the use of a lathe in the ordinary methods of turning bars of metal to shape and form might, it is true, be deemed waste, but there is no evidence here to negative the idea that these parings and shavings may have been produced for use in the manufacture of a packing. The appearance of the sample is suggestive of an article specially prepared for calking purposes. The importation was properly assessed under paragraph 199, tariff act of 1909, as articles or wares not specially provided for composed wholly or in part of lead or other metal.

United States Court of Customs Appeals, November 22, 1911.

APPEAL from Board of United States General Appraisers, Abstract 25107 (T. D. 31429).

[Decision affirmed.]

Comstock & Washburn (*Albert H. Washburn* and *J. Stuart Tompkins* of counsel) for appellants.

Wm. K. Payne, Deputy Assistant Attorney General, for the United States.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

BARBER, Judge, delivered the opinion of the court:

The merchandise involved here is known as "planit" packing and is used for engine packing and calking purposes. It is not designed

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to be melted, but to be put in place by pounding. It was entered at the port of Chicago in October, 1909; was assessed for duty as a manufactured article wholly or in chief value of metal under the provisions of paragraph 199 of the tariff act of 1909, which reads as follows:

199. Articles or wares not specially provided for in this section, composed wholly or in part of iron, steel, lead, copper, nickel, pewter, zinc, gold, silver, platinum, aluminum, or other metal, and whether partly or wholly manufactured, forty-five per centum ad valorem.

The importers claimed the merchandise to be dutiable as waste under paragraph 479 of the same act, which is as follows:

479. Waste, not specially provided for in this section, ten per centum ad valorem.

The Board of General Appraisers overruled the protests.

The only evidence is a sample of the importation and the testimony of one witness on behalf of the importers. From the latter it appears that the importation is composed of tin parings and lead shavings, and that these shavings are obtained by the use of a lathe in the ordinary methods of turning bars of metal to shape and form. In what proprotion these tin parings and lead shavings are combined to constitute the merchandise before us the record does not show, nor does it appear therefrom how the same are united to form the "Planit" packing.

We are unable to discover in the record evidence sufficient to justify the conclusion that the importation is waste.

While it is argued for the importers that the packing is composed of shavings of tin and lead gathered up after they have been cut off by a sharp-edged instrument in the process of manufacturing other articles, which shavings, it is claimed, before being gathered up are waste, yet the record does not disclose clearly that such is the fact. The importers did not show how this "Planit" packing is made.

As a result of their combination, whatever it may be or however accomplished, these parings and shavings after being united have received a new commercial designation, namely, "Planit packing."

So far as the evidence discloses it is just as reasonable to infer that these shavings were produced for the express purpose of manufacturing this engine packing as it is to infer that they are the waste products of some other manufacture, as claimed by the importers. The appearance of the sample of the importation before us is suggestive of the fact that it has been specially prepared and fitted for calking purposes and tends to negative the claim that it is waste.

We think, as did the board, that the evidence is insufficient to overcome the presumption of the correctness of the collector's classification.

The judgment of the Board of General Appraisers is *affirmed*.

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(T. D. 32049.)

Bayonets.

AMERICAN EXPRESS CO. ET AL. *v.* UNITED STATES (No. 672).

BAYONETS ARE SIDE ARMS.

A bayonet when in use is affixed to a gun, but is not to be considered a part of the gun. The lexicons uniformly define "bayonets" as side arms. As such, they were dutiable under paragraph 154, tariff act of 1897, and are dutiable under paragraph 153, tariff act of 1909.

United States Court of Customs Appeals, November 22, 1911.

APPEAL from Board of United States General Appraisers, G. A. 7201 (T. D. 31477).

[Decision affirmed.]

A. L. Hirsch for the appellants.

Wm. K. Payne, Deputy Assistant Attorney General (*Thos. J. Doherty* on the brief), for the United States.

Before MONTGOMERY, SMITH, BARBER, and MARTIN, Judges.

BARBER, Judge, delivered the opinion of the court:

Several protests are involved in this case, but all relate to the same article—bayonets. Some of these importations were made while the tariff act of 1897 was in force, while others were made after the tariff act of 1909 became operative.

The single question is whether these bayonets are dutiable as "side arms" under the provisions of paragraph 154 of the act of 1897 and paragraph 153 of the act of 1909, which are as follows:

154. Swords, sword-blades, and side-arms, thirty-five per centum ad valorem.

153. Sword-blades, and swords and side-arms irrespective of quality or use, in part of metal, fifty per centum ad valorem.

or as parts of muskets or rifles under paragraph 157 of the act of 1897 and paragraph 156 af the act of 1909, the language of which is identical and is as follows:

Muskets, muzzle-loading shotguns, rifles, and parts thereof, twenty-five per centum ad valorem.

The collector assessed the same as side arms and the Board of General Appraisers affirmed the collector.

No question of commercial designation is made, and therefore the case turns upon what is the ordinary meaning of the words "side arms." Do they include a bayonet, or is a bayonet a part of a musket or rifle?

"Side arms" are defined by various lexicographers as follows:

Standard Dictionary:

Weapons worn at the side, as swords, pistols, bayonets, etc., especially swords.

Webster's Dictionary:

Weapons worn at the side, as sword, bayonet, pistols, etc.

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Century Dictionary:

Weapons carried by the side or at the belt, in contradistinction to musket, lance, etc.

Encyclopædia Britannica:

Side arms are those which, when not in use, are worn at the side, *e. g.*, daggers, swords, bayonets.

The term "bayonet" is uniformly defined and commonly understood to mean a dagger or short stabbing instrument of steel for infantry soldiers, made to be attached to the muzzle of a gun when in use.

It is contended by the importers that a bayonet is a part of a musket or rifle, while the contention of the Government is that although when actually put to use in war it is attached to the musket or rifle, as the case may be, yet it is not an ordinary part thereof, and properly falls within the definition of side arms. The definitions of the term "side arms" as given above strongly substantiate this claim.

It seems unnecessary to review in much detail the evidence introduced by both sides at the hearing before the Board of General Appraisers, but it is sufficient to say that witnesses on both sides agree that when attached to musket or rifle the bayonet impedes the successful use thereof in firing, which is concededly the prime purpose of its use and existence. In other words, the bayonet is an auxiliary weapon to be attached to the musket or rifle in actual warfare under certain conditions; is not ordinarily so attached, and when unattached and carried by the soldier is worn in his belt like other side arms. Then, again, both rifles and muskets have large uses other than for purposes of war, and in such cases the bayonet would not seem to be any part thereof.

In an earlier case before it (see Abstract 22335, T. D. 30208) the Board of General Appraisers said:

A rifle is a complete article without the sword bayonet, and the latter is not an essential or necessary attachment to the rifle. The bayonet is worn as a sword or side arm, and though it may be attached to a rifle, that use is simply optional.

And it referred to that decision in the case at bar.

In the case of Schoverling *et al. v.* United States (142 Fed. Rep., 302) it was held that an india-rubber recoil pad, intended to take the place of the heelplate of a gun for the purpose of resisting its recoil when discharged, was not dutiable as a part of a gun, on the ground that it was not an essential, but simply an optional, attachment thereto.

We think the Board of General Appraisers committed no error in its determination of this case.

The importers in their brief insist that if the court concludes the bayonet to be a side arm, yet it should, nevertheless, be classified

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as a part of a rifle, because it is claimed that where articles are designated in the tariff act under two classifications "they should be assessed under the classification carrying the lower duty." This proposition would, in view of the provisions of section 7 of the act of 1897 and of paragraph 481 of the act of 1909 that "if two or more rates of duty shall be applicable to any imported article it shall pay duty at the highest of such rates," seem to be unfounded.

The judgment of the Board of General Appraisers is *affirmed*.

DE VRIES, Judge, did not sit in this case.

(T. D. 32050.)

Bead articles.

LITTAUER *v.* UNITED STATES (No. 676).

BEADS, STRUNG ON COTTON THREADS AT FIXED AND EQUAL DISTANCES.

The phraseology of paragraph 421, tariff act of 1909, relative to beads and spangles, discloses a substantial change from the language in the former law relating to the same subject matter, and it appearing the importation is of beads on strands of a permanent kind designed for use as embroidery just as imported, they will be deemed dutiable conformably to the requirements of that paragraph.

United States Court of Customs Appeals, November 22, 1911.

APPEAL from Board of United States General Appraisers, G. A. 7215 (T. D. 31541).

[Decision affirmed.]

Comstock & Washburn (*Albert H. Washburn* and *Geo. J. Puckhafer* of counsel) for appellants.

Wm. L. Wemple, Assistant Attorney General (*Charles Duane Baker* on the brief), for the United States.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

MARTIN, Judge, delivered the opinion of the court:

The merchandise involved in this case consists of small black beads strung upon cotton threads.

The collector assessed them as articles composed in chief value of beads under the provisions of paragraph 421 of the tariff act of 1909, and assessed duty upon them at 60 per cent ad valorem.

The importer filed his protest to this ruling and contended that the goods were dutiable at 45 per cent ad valorem as manufactures in chief value of glass or paste under paragraph 109 of that act.

The Board of General Appraisers heard this protest upon evidence and overruled the same. The importer now seeks a reversal of the board's decision.

The following is a copy of paragraph 421 of the act of 1909 under which the merchandise was assessed for duty:

421. Beads and spangles of all kinds, including imitation pearl beads, not threaded or strung, or strung loosely on thread for facility in transportation only, thirty-five per centum ad valorem; fabrics, nets or nettings, laces, embroideries, galloons, wearing

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apparel, ornaments, trimmings, curtains, fringes, and other articles not specially provided for in this section, composed wholly or in chief value of beads or spangles made of glass or paste, gelatin, metal, or other material, but not in part of wool, sixty per centum ad valorem: *Provided*, That no article composed wholly or in chief value of beads or spangles made of glass, paste, gelatin, metal, or other material shall pay duty at a less rate than is imposed in any paragraph of this section upon such articles without such beads or spangles.

As has already been stated, the articles in question consist of small black beads strung upon cotton threads. The beads are manufactured of glass and are hexagonal in form. The strands into which they are strung are strong and permanent in character. One thread in each strand passes over and through the beads and is knotted in such a manner as to hold them in place upon the string and maintain permanent and equal spaces between the several beads. Each string thus constructed is about 144 yards long and is fit as imported to be applied as a trimming or fringe to women's wearing apparel, and this is the use which is in fact made of the importations. It is conceded that the beads of each strand are more valuable than the threads upon which they are strung.

Upon these facts it is of course apparent that the beads in question can not be classified as beads "not threaded or strung;" nor can they be held to be beads "strung loosely on thread for facility in transportation only." Those classes are made dutiable by the first part of the paragraph at 35 per cent ad valorem.

The paragraph, however, further provides for "fabrics, * * * trimmings, * * * and other articles not specially provided for in this section, composed wholly or in chief value of beads." * * * This class of articles is made dutiable at 60 per cent ad valorem. The goods in question seem to fall directly within this classification; they are articles of permanent construction, composed in chief value of beads, fit and designed for use in their present condition as trimmings of the kind covered by the paragraph, and are aptly described by the terms therein contained. Therefore both by the direct language and by the constructive meaning of the paragraph it includes such articles as those in question in this case.

It appears that under the corresponding provisions of the tariff act of 1897 some confusion arose concerning the proper classification of articles similar to these. That act contained no specific provision for beads "strung loosely on thread for facility in transportation only." In certain early decisions under the act the Board of General Appraisers held that beads thus loosely and temporarily strung should therefore be classified as manufactures not specifically provided for in the act and dutiable according to the component material of chief value thereof. This construction resulted from the fact that such bead articles could not be classified as "beads not threaded or strung," for they were in fact threaded and strung, however loosely and tem-

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porarily. Nor could such articles be classified as "fabrics, * * * trimmings, etc., composed wholly or in chief value of beads," because the temporary character of the string and the fact that they were not intended for use as thus loosely strung prevented such a designation. Therefore the construction above stated was adopted, and such beads thus temporarily strung were held to be articles not included within the bead paragraph, but dutiable as manufactures not specifically provided for according to the component material of chief value thereof. If the beads were composed of metal, glass, or paste, this rate was 45 per cent ad valorem; if they were composed of wax, the rate was 25 per cent. However, in 1902 the Board of General Appraisers reported a decision, as G. A. 5210 (T. D. 24013), in which certain strings of beads constructed like those at bar were placed within the same classification as the loose and temporary strings above described. This decision was afterwards repeatedly followed by the board in similar cases. These decisions contained no new or different construction of the statute from that above outlined, but they simply held as a matter of fact that strings of beads constructed like those herein involved were substantially similar to the loosely constructed strings above described and subject to the same classification.

The appellant in this case relies upon these rulings, and upon the executive practice which followed them, as authority for his present contention. In that behalf he contends that—

> Upon a revision of statutes a different interpretation is not to be given to them without some substantial change of phraseology other than what may have been necessary to abbreviate the form of the law.

However, the answer which suggests itself to this argument is this: That the present bead paragraph does in fact present such a "substantial change of phraseology" from the former act, and the change covers the very matter in controversy. This appears in the first clause of paragraph 421 of the later act in the form of the specific provision above set out for beads "strung loosely on thread for facility in transportation only." By virtue of this provision the former classification of such articles according to component material of chief value is abrogated and they are made dutiable at the same rate as beads wholly unstrung. Consequently if the articles at bar are continued in the same classification with such loose strings of beads they will not be dutiable according to the component material of chief value thereof, but at the rate specifically provided by the paragraph for such loose strings, which, as above stated, is the same rate as that imposed upon beads wholly unstrung. The articles in this case certainly can not share in this new specific provision, because the provision is expressly and even emphatically limited to beads loosely strung on thread for facility in transportation only. This

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language unmistakably implies that the provision shall contain only such strings as are so loosely strung as not to be fit for use as strands but which are to be separated and resolved into beads again for use. This therefore excludes from the provision all such articles as those herein involved; for these articles are not loosely strung on thread for facility in transportation only, and are not to be divided or separated for use after importation, but are articles of permanent construction designed to be finally used in the form in which they are imported. They must therefore fall within the second classification contained in the paragraph and are dutiable at 60 per cent ad valorem as assessed by the collector.

The decision of the Board of General Appraisers is therefore *affirmed.*

(T. D. 32051.)

Ripe olives in brine.

GOUSSIOS & CO. ET AL. *v.* UNITED STATES (No. 682).

1. AN ADMINISTRATIVE FOLLOWED BY A STATUTORY CONSTRUCTION.

It is true a more specific designation controls as against a general designation, that a designation *eo nomine* controls as against a description by class, but where there has been an administrative construction and this has been adopted into law this construction must control.—Brennan *v.* United States (136 Fed. Rep., 743).

2. OLIVES BARRELED IN BRINE.

To hold this importation to be "fruit in brine" and free of duty as such would be to hold all olives are duty free. The construction given in the administration of the law and the apparent adoption of this construction by subsequent congressional enactment makes black or ripe olives in brine dutiable under paragraph 275, tariff act of 1909.—Causse Mfg. Co. *v.* United States, G. A. 5417 (T. D. 24663), distinguished.

3. ALLOWANCE FOR BRINE, WHEN NOT MADE.

The actual quantity of olives in the importation was, it would seem, ascertained by the gauger and no allowance should accordingly be made for brine.

United States Court of Customs Appeals, November 22, 1911.

APPEAL from Board of United States General Appraisers, Abstract 25647 (T. D. 31624).

[Decision affirmed.]

Hatch & Clute (*Edward S. Hatch* and *Walter F. Welch* of counsel) for appellants.

Wm. L. Wemple, Assistant Attorney General (*Leland N. Wood* on the brief), for the United States.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

MONTGOMERY, Presiding Judge, delivered the opinion of the court:

The importations involved in this case are of black or ripe olives, imported from Greece in barrels. Duty was assessed on the fruit at the rate of 15 cents per gallon under paragraph 275 of the tariff act of 1909. The importers claim free entry under paragraph 571, which provides for "fruits or berries, green, ripe, or dried, and fruits in brine, not specially provided for in this section."

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Paragraph 275 reads as follows:

275. Figs, two and one-half cents per pound; plums, prunes, and prunelles, two cents per pound; raisins and other dried grapes, two and one-half cents per pound; dates, one cent per pound; currants, Zante or other, two cents per pound; olives, in bottles, jars, kegs, tins, or other packages, containing less than five gallons each, twenty-five cents per gallon; otherwise, fifteen cents per gallon.

The provision for olives *eo nomine* in this paragraph is very broad, but standing by itself would most clearly cover the importations in question.

It is said by importer's counsel that under the tariff act of 1897 it was held that olives in brine were free of duty as fruits in brine, citing United States *v.* Zucca & Co. (175 Fed. Rep., 578). This is not, however, an accurate statement of the holding in that case. What was held in that case was that under the act of 1897, which provides for olives, green or prepared, in casks, 15 cents per gallon, ripe olives did not come within this designation; that they were not green olives; and that they were not prepared in the sense in which that term was used in the act. After fully discussing the testimony, the court said:

I know of no case where the courts have held that the application of salt and water alone constitutes a preparation, nor do I believe that such was the intent of Congress in using that language.

And it was further said by the court:

As the new tariff law of 1909 puts all olives on the same footing, it is unnecessary to further discuss the question, as any decision now made in the case at bar can only affect pending cases.

This case points clearly the distinction between the law of 1897 and that of 1909, and were the decision to be rested upon this case alone the Government's contention that by a change in the phraseology of the section relating to olives by the use of unrestricted language covering olives in bottles, jars, kegs, tins, or other packages, and eliminating the words "green or prepared," it would so broaden the provision of the earlier act as to include ripe olives, would be beyond question.

It appears by an examination of the decisions of the Board of General Appraisers cited in the brief of counsel that while the question appears not to have been much discussed, green olives and prepared olives were treated as dutiable under section 264 of the act of 1897 during its entire history.

The distinction between green and ripe olives was first made by a court decision in United States *v.* Zucca, *supra*, after the act of 1909 took effect. This case, however, was in affirmance of a decision by the Board of General Appraisers in 1906 and reported in G. A. 6505 (T. D. 27793), and the inference is very strong that the change in

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the law was made for the purpose of doing away with that distinction which the Board of General Appraisers had recognized.

To justify a holding under the present law that these olives are entitled to entry as fruit in brine we must conclude that the purpose was to admit all olives free, for no one can seriously contend that there is now any distinction between green olives and ripe olives, both the subject of importation.

But the contention of appellant's counsel is broadly that the terms of the free list above quoted for fruits in brine should be taken as more specific than the provisions for olives in paragraph 275, and cites, to sustain this contention, the case of A. L. Causse Manufacturing Co. *v.* United States, G. A. 5417 (T. D. 24663), which case involved a provision for fruits in brine in contest with cherries, green or ripe, under paragraph 262 of the act of 1897, the material part of which was deemed by the board to be—

> Apples, peaches, quinces, cherries, plums, and pears, green or ripe, 25 cents per bushel; apples, peaches, pears, and other edible fruits, including berries, when dried, desiccated, evaporated or prepared in any manner, not specially provided for in this act, 2 cents per pound. * * *

The board, in construing this section 262, said:

> In our judgment the terms "green or ripe," in paragraph 262, as was said by the Circuit Court in construing similar words in paragraph 580 of the act of 1890, refer to "fruits brought here in the state in which they are picked without being subjected to any preserving process." Johnson *v.* United States (66 Fed. Rep., 725). The imposition of a duty of 25 cents "per bushel" suggests an intent to include in paragraph 262 only fruit as picked from the tree. They would not fall within the second subdivision of the paragraph as fruits "prepared in any manner." This expression has been held under the application of the doctrine of *noscitur a sociis* to embrace only fruits preserved by drying processes. Citing *In re* Curtis, G. A. 5205 (T. D. 23987); *In re* Loggie, G. A. 4782 (T. D. 22545).

The board further said:

> Not being specially provided for in paragraph 262 or elsewhere, they come within the enumeration of "fruits in brine, not specially provided for," in paragraph 559 of the free list as claimed.

This case can hardly be deemed an authority, for it was determined upon the case there considered that the importation was not specially provided for in section 262. It can not be truthfully said that olives are not specially provided for in the paragraph here under consideration.

Counsel next cites the case of Brennan *v.* United States (136 Fed. Rep., 743). This case was very carefully considered, and a very able opinion given by Putnam, C. J. This also involved paragraph 266 of the act of 1897, covering "oranges, lemons, limes, grapefruit, shaddocks, or pomelos, 1 cent per pound," in contest with fruits in brine, the importation consisting of limes in brine. It was found by the uncontradicted evidence that the expressions "limes in brine" and

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"pickled limes" are in mercantile uses synonymous and interchangeable, and that there has always been a trade distinction between limes and limes in brine to the extent that if one asked a merchant for limes he would be given fresh limes. The court then discusses the rule invoked by counsel for Government that an *eo nomine* provision should generally be given controlling effect as against a general provision and the construction urged by the importer, and said:

> Therefore it is that sometimes the ordinary rule that articles are not dutiable under general terms when a duty is imposed in specific language leaves it to be determined what is specific language, and whether it is that which contains a designation *eo nomine* or that which describes a class. Evidently language referring to the latter may be, under some circumstances, the more specific, and such apparently is the case at bar.

And then proceeds to say that—

> Notwithstanding the great weight given in customs cases to the two rules of interpretation, which, as we have said, are relied on on the one side by the United States and on the other by the importer, there is another rule which masters them both.

The court then proceeds to point out that a distinction had been made in previous tariff acts covering a period of many years which limited the terms "oranges, lemons, and limes" as used in the context to fresh fruit, and that limes in brine were not to be classified under limes *eo nomine* and that as Congress had reenacted the various expressions involved without discrediting the Treasury interpretation thereof, it amounted in its several aspects to a statutory construction to the effect that the word "limes" does not include limes in brine, and concluded by saying:

> This statutory construction is of the highest authority and masters all the other rules.

Unfortunately for the contention of the importer, if the same master rule be applied in construing the present statute, it is evident that it makes against the contention presented, as under the prior act of 1897, during its entire history, it would appear that olives answering to the description contained in paragraph 264 were assessed at the rate there fixed, although they were imported in brine.

It is also contended by the appellant that an allowance should be made for the brine in which the olives were shipped. There were numerous shipments involved in this case, one from Calamata and the others from other parts of Greece. The board found that the testimony on the part of the Government conclusively established that in all shipments of olives except those from Calamata the fruit is in a solid, compact condition, not increased in any way by the presence of brine; that a deduction should not be made for brine unless it were made to appear that the presence of the brine increased the volume of the commodity, and that if you have a given gallon of dry olives a certain amount of liquid could be poured into the measure

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without increasing the volume of the fruit. The testimony in the case shows that all the olives were gauged for the purpose of ascertaining the gauge of the olives alone, and the gauger testified that the quantity of olives is always apparent to the gauger. The wantage in these various importations varied from 5 to 15 or 20 per cent.

The protest does not show that amount of brine was present in the Calamata olives, nor does the testimony establish satisfactorily that the gauger did not in this case, as in that of the other importations, ascertain with reasonable certainty the actual quantity of olives. The method employed seems to have been the usual one.

The decision is *affirmed*.

(T. D. 32052.)

Marble vase—Sculpture.

UNITED STATES *v.* BAUMGARTEN & CO. (No. 687).

CARVED MARBLE VASE COPY OF AN ARTISTIC ORIGINAL.

A carved marble vase, made by a sculptor as a copy of an original in the Borghese collection, is not to be deemed a manufactured article. The evidence shows that artistic skill was employed in its production, and it was properly held to be dutiable as a "sculpture" under paragraph 470, tariff act of 1909.

United States Court of Customs Appeals, November 22, 1911.

APPEAL from Board of United States General Appraisers, Abstract 25440 (T. D. 31543).

[Decision affirmed.]

Wm. K. Payne, Deputy Assistant Attorney General (*Leland N. Wood* on the brief), for the United States.

Brooks & Brooks (*F. W. Brooks, jr.*, of counsel) for appellees.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

MARTIN, Judge, delivered the opinion of the court:

Under the tariff act of 1909 the appellees imported into this country a carved marble vase, which is a copy of one of the vases in the Borghese collection at Rome.

Duty was assessed upon the article by the collector at the rate of 50 per cent ad valorem as "marble manufactured into a vase," under the provisions of paragraph 112 of the act, which reads as follows:

112. Marble, breccia, onyx, alabaster, and jet, wholly or partly manufactured into monuments, benches, vases, and other articles, or of which these substances or either of them is the component material of chief value, and all articles composed wholly or in chief value of agate, rock crystal, or other semiprecious stones, except such as are cut into shapes and forms fitting them expressly for use in the construction of jewelry, not specially provided for in this section, fifty per centum ad valorem.

The importers duly filed their protest to this classification, and contended that the importation should properly be assessed with duty

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at 15 per cent ad valorem only, as a "sculpture," within the provisions of paragraph 470 of the same act, which reads as follows:

470. Paintings in oil or water colors, pastels, pen and ink drawings, and sculptures, not specially provided for in this section, fifteen per centum ad valorem; but the term "sculptures" as used in this act shall be understood to include only such as are cut, carved, or otherwise wrought by hand from a solid block or mass of marble, stone, or alabaster, or from metal, and as are the professional production of a sculptor only, and the term "painting" as used in this act shall be understood not to include such as are made wholly or in part by stenciling or other mechanical process.

The protest of the importers was sustained by the Board of General Appraisers, and the Government now appeals from that decision.

The question therefore is whether the imported vase should properly be classified as marble manufactured into a vase, or as a sculpture. In the former case it is dutiable at 50 per cent ad valorem, in the latter case at 15 per cent ad valorem.

The marble vase in question came from the studio of an Italian sculptor of ability and reputation, said by a witness to be one of the highest and best artists in Italy; it is identified as his production by the importer, who is himself a student of art and who is familiar with the artist's work. The witness had seen the artist at work upon a companion to this piece, and is able to recognize this article by its style of execution as the artist's own work. The vase is not an original creation of the sculptor, but is a copy of a classical masterpiece. The invoice value of the article is $453, and it is apparent that it has no utilitarian value at all proportionate to this cost.

The article is made from a solid block of marble, and although the rough tooling was doubtless done by a whipper, yet the vase was carved by hand as the professional production of the sculptor himself.

A photograph of the vase is filed as an exhibit in the case, and it appears therefrom that it is an article of great beauty, that the part of chief value is a procession of human figures surrounding the bowl of the vase, which are cut in pronounced relief and give every evidence of great artistic merit. The work shows the application of personal study upon the part of the artist and proves the professional character and ability of its author. It is obviously no mere mechanical effort at a reproduction of the original.

These qualities seem to entitle the article in question to the name of a sculpture. Among the several definitions of that term cited in the briefs are the following:

Century Dictionary:

Sculpture.—A shaping art, of which the business is to imitate natural objects, and principally the human body, by reproducing in solid form either their true proportions in all dimensions, or else their true proportions in the two dimensions of length and breadth only, with a diminished proportion in the third dimension of depth or thickness.

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Century Dictionary and Cyclopedia:

Sculpture is the expression of human thought and emotion in solid form; that is, in the three dimensions of space, length, breadth, and thickness. * * * If a work in sculpture gives to all three dimensions of space their full value, it is said to be "in the round;" if only length and breadth are completely expressed, and thickness or depth is abridged, it is said to be "in relief."

The New International Encyclopedia:

Sculpture, a term including all methods of producing a purely artistic result in solid form, as distinguished from architecture, in which utilitarian work is beautified.

Forms of sculpture: As to its forms and character sculpture is divisible into that which is in relief, in which the masses project slightly from a solid surface, and that "in the round," to use a phrase common among artists, and which denotes statues, busts, free groups, and the like.

The Government, however, contends that the article in question nevertheless comes with almost mathematical certainty within the class established by paragraph 112 above copied. That paragraph provides in terms for marble manufactured into a vase, and it is contended that the material of this article is certainly marble and the article which has been produced from that material is concededly a vase, and therefore that it must be marble manufactured into a vase. It is further contended that if the article in question is a sculpture and is also marble manufactured into a vase, the latter title should prevail in the classification because it is the more specific of the two.

The question therefore properly arises whether or not this article is marble manufactured into a vase within the meaning of paragraph 112.

A consideration of that paragraph leads to the conclusion that it was not intended to cover artistic productions in marble of such figures as are described in the foregoing definitions, whose value depends either upon the individual conceptions of the artist or upon his professional taste, touch, and spirit in execution, and that, therefore, the same article can not come properly within the terms of both of the paragraphs under consideration. It is true that such an article as the one in question comes apparently within the letter of paragraph 112, as contended by appellant; but it is foreign to its spirit. That paragraph groups such vases as it covers with monuments and benches, and thereby in part implies that the classification is intended to cover only such productions as are above denominated as utilitarian works which are beautified, and not such reproductions of animate of inanimate forms in marble as reach the dignity and character of studies by professional sculptors. The fact that the article in question is a vase and that marble manufactured into vases is specially named in the one paragraph does not, therefore, effectually conclude the argument. The form of a vase indeed has been used from ancient times as a medium for the finest artistic pro-

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ductions, and in many such works the utilitarian character of the article is wholly lost in its artistic character. In the case at bar the form of a vase has been used by the artist merely as a support for the real work of the piece, and the importation is indeed doubly removed from utilitarian character by reason of the fact that it is a copy of an article which is preserved in a famous collection as a work of art of classical merit.

Again, the word "manufactured," used in paragraph 112, also confirms the view here suggested. That word as implied from its etymology originally meant made by hand, but in present-day usage it carries quite a different meaning; it now more nearly means made by machinery, or at least made in large quantities and as part of a regular business. A piece of marble chiseled by a sculptor into life-like figures imposed upon the bowl of a vase, all comprising a single professional production full of artistic character, would not now ordinarily be said to be marble manufactured into a vase.

Nor does the fact that the work is a copy of an ancient masterpiece rather than an original conception of the artist change this conclusion. It is a matter of common knowledge that appropriate works thus reproduced are treated as sculptures quite as much as if they followed living models or actual inanimate objects. In the case of the copy the idealization is provided for the artist by the original, but the execution of the copy may nevertheless engage and require professional character and ability of a high order. This is proven by an inspection of the photograph of the work at bar, which may easily be distinguished from a marble vase manufactured by machinery or formed by the hand of a mere artisan.

There is high authority for the view last above expressed, as appears from the following excerpt from the opinion of Mr. Justice Gray in the case of Tutton *v.* Viti (108 U. S., 312, 313):

> There is nothing in the acts of Congress to limit the professional productions of a statuary or sculptor to those executed by a sculptor with his own chisel from models of his own creation, and to exclude those made by him, or by his assistants under his direction, from models or from completed statues of another sculptor, or from works of art, the original author of which is unknown. An artist's copies of antique masterpieces are works of art of as high a grade as those executed by the same hand from original models of modern sculptors.

These considerations are all consistent with the obvious legislative purpose incorporated into the respective paragraphs under review. The "manufactured" paragraph levies a duty of 50 per cent ad valorem, whereas the "sculptors" paragraph provides for a duty of only 15 per cent ad valorem. This lesser rate is in the interest of art and education and in acknowledgment of the labors of professional artists. The article in question properly belongs in character to this latter sphere notwithstanding its seeming literal identity with the articles named in the other paragraph. In this view of the case, the decision of the board is therefore *affirmed*.

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(T. D. 32053.)

Artificial shamrocks.

TUSKA, SON & CO. ET AL. *v.* UNITED STATES (No. 692).

ARTIFICIAL SHAMROCKS, ARTIFICIAL LEAVES.

It is a matter of common knowledge that the leaves of the shamrock are trefoil in shape and green in color. The importations are not toys, and while partly made of silk they resemble shamrock leaves. They may be aptly described as artificial shamrocks, and they were properly held dutiable as artificial leaves under paragraph 438, tariff act of 1909.

United States Court of Customs Appeals, November 22, 1911.

APPEALS from Board of United States General Appraisers, Abstract 25543 (T. D. 31589), and Abstract 25835 (T. D. 31675).

[Decision affirmed.]

John Giblon Duffy and *Joseph G. Kammerlohr* for appellants.

Wm. L. Wemple, Assistant Attorney General (*Charles Duane Baker* on the brief), for the United States.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

BARBER, Judge, delivered the opinion of the court:

The protests here relate to an article referred to in the record as toy shamrocks, sometimes as artificial shamrocks. They were classified and assessed for duty as artificial leaves under paragraph 438 of the tariff act of August 5, 1909, the material part of which is as follows:

438. * * * Artificial or ornamental feathers, fruits, grains, leaves, flowers, and stems or parts thereof, of whatever material composed, not specially provided for in this section, sixty per centum ad valorem. * * *

They are made of silk and metal, having in addition in some instances a miniature clay pipe or hat attached thereto, and for the purposes of the case it is conceded that silk is the component material of chief value.

The importers claim that the merchandise is dutiable under paragraph 403 of the same act, the material part of which is as follows:

403. All manufactures of silk, or of which silk is the component material of chief value, * * * not specially provided for in this section, fifty per centum ad valorem. * * *

The protests were overruled by the Board of General Appraisers and the case is duly here upon appeal.

The articles appear to be made by forming a small wire into a trefoil shape and filling the space inclosed thereby with threads of silk yarn extending from the periphery through the approximate center of the shape. The yarn is colored green, and three of these trefoil shapes so filled with silk yarn are placed upon a single wire stem, which is tightly covered or wound with some green-colored paper or fabric. The greatest diameter of these shapes, so far as disclosed by the exhibits before us, is about three-fourths of an inch.

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The contention of the importers is that the provision of paragraph 438 for artificial leaves must be confined to such articles or their parts as truly simulate natural leaves, and that the merchandise at bar does not simulate such leaves and can not, therefore, in any sense be described as an imitation thereof.

The board in effect found that the importations are artificial shamrocks, which we understand, amongst other things, to mean that they do simulate the natural shamrock; but it is said that the evidence does not sustain the finding, and it is pointed out that one witness introduced on behalf of the importers testified that the exhibits in the case presented no resemblance to the natural shamrock and bore no similitude to any natural leaf whatever.

We have carefully examined the record, and therefrom it appears that the only witnesses introduced were on behalf of the importers and that one witness did testify as claimed by the importers. It also appears that another witness testified in substance that the exhibits did resemble the shamrock in shape and color, although he said he was not prepared to say whether or not they were larger or smaller than the natural leaf of the shamrock. Some of the importers' witnesses testified that the articles are bought and sold all over the United States as toy shamrocks; that they are pretty generally worn as the emblem of the shamrock by men, women, and children, mainly of Irish parentage, on St. Patrick's Day; that they are largely handled in the toy departments of various stores and are bought and sold as toy shamrocks, but not under the name of artificial flowers or foliage. They are not claimed to be dutiable as toys.

The board evidently affirmed the collector's classification upon the authority of former decisions of their own and that of United States *v.* Cattus (167 Fed. Rep., 532). An examination of that case shows that the articles were artificial shamrocks made of silk and metal, silk of chief value; that they were assessed as artificial leaves under paragraph 425 of the act of 1897, which was the predecessor of paragraph 438 of the act of 1909. It was there claimed they should have been assessed as toys. The Circuit Court of Appeals for the Second Circuit in substance said it appeared that they were sold as shamrocks, were used by the Irish of all ages as the national emblem on St. Patrick's Day, although they were imported by toy dealers and sold in toy shops, and sustained the assessment as artificial leaves. The only difference between that case and the one at bar that we are able to discover is that here it is contended by the importers that the articles are dutiable as manufactures in chief value of silk, while there it was urged that they were dutiable as toys.

We have no evidence as to the shape or size of the shamrock other than what we have already mentioned as embodied in the record. The Standard Dictionary defines "shamrock" as "any one of several

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trifoliolate plants accepted as the national emblem of Ireland," and the cut of the same accompanying the definition shows a stock from which leaves issue in groups of three upon one stem, which leaves in form closely resemble that of the exhibits in question.

Various other lexicographers define the shamrock as a plant bearing trifoliolate leaves and generally refer to some variety of the clover as probably the true shamrock.

We think it is common knowledge that the leaves of the shamrock are of trefoil shape and of green color, which is the shape and color of the leaves on the exhibits in this case, and that it follows that these leaves do simulate and resemble the shamrock leaves and that the importations are artificial shamrocks. They have no considerable use as toys, but are, as the witnesses agree, worn in the United States as representing the national emblem of the Irish people on St. Patrick's Day. They are artificial leaves as classified by the collector and dutiable as such.

The judgment of the Board of General Appraisers is *affirmed*.

(T. D. 32054.)

Linen damask.

WHITE & CO. *v.* UNITED STATES (No. 702).

1. PLAIN WOVEN FABRICS.

Plain woven fabrics are to be distinguished by their not having twilled or figured effects produced in the process of weaving.

2. LINEN DAMASK NOT PLAIN WOVEN FABRICS.

The evidence shows that linen damask is not a plain woven fabric and it was properly held to be dutiable under paragraph 358, tariff act of 1909, "all woven articles * * * and all manufactures of flax * * * not specially provided for."

United States Court of Customs Appeals, November 22, 1911.

APPEAL from Board of United States General Appraisers, G. A. 7222 (T. D. 31588). [Decision affirmed.]

Brooks & Brooks (*F. W. Brooks* and *E. P. Sharretts* of counsel) for appellants.

Wm. L. Wemple, Assistant Attorney General (*Thomas J. Doherty* on the brief), for the United States.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

MONTGOMERY, Presiding Judge, delivered the opinion of the court:

This is an appeal from a decision of the Board of General Appraisers, G. A. 7222 (T. D. 31588), which affirmed the assessment of duty by the collector of customs at the port of New York on certain linen damask at the rate of 45 per cent ad valorem under the provisions of paragraph 358 of the act of 1909, the pertinent provisions of which are as follows:

* * * All manufactures of flax, hemp, ramie, or other vegetable fiber, or of which these substances, or any of them, is the component material of chief value, not specially provided for in this section, forty-five per centum ad valorem.

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The claim relied upon by the importer is that the importation is dutiable under paragraph 357, which reads in part as follows:

* * * Plain woven fabrics, not including articles, finished or unfinished, of flax, hemp, or ramie, or of which these substances or any of them is the component material of chief value, including such as is known as shirting cloth; weighing less than four and one-half ounces per square yard and containing more than one hundred threads to the square inch, counting the warp and filling, thirty-five per centum ad valorem. * * *

The sole question involved in the case is, what was intended by the term "plain woven fabrics," as employed in paragraph 357 of the present act?

In the Standard Dictionary the term "plain weave" is defined as—

The first of the foundation systems of weave, having no conspicuous ornamentation; unadorned; unvariegated; in the case of cloths, not figured, or untwilled; as * * * plain muslin.

"Foundation weave" is defined as—

The three systems of weave, the plain weave, the twill and the satin weaves that are the foundation of all weaves.

"Twill" is defined as—

One of the three foundation systems of weave, in which the shuttle carries the woof (filling) threads over one and under two or more warp threads.

"Damask" is defined as—

A fine (light weight) twilled table linen. * * *

It is contended by the importer that as this damask is produced by plain warp filling threads which are white, extending in unbroken continuity throughout the entire fabric, at right angles with each other, in parallel lines and so plainly woven that each square inch of the fabric contains the same number of warp and filling threads, they should be deemed plain woven, and it is pointed out that the figure is produced not by means of extra shuttles or extra beams, as distinguished from fancy linens, which are produced by swivel or extra shuttles carrying additional or fancy threads, making raised figures which do not run parallel to the neighboring threads or at right angles to the warp and weft threads, as the case may be.

No authority is found for such a distinction between plain woven and fancy woven goods. On the contrary, under the tariff act of 1897, which, with respect to this question, is similar to that of 1909, it was said by the Board of General Appraisers as early as March, 1898, in T. D. 19098, that—

"Plain woven" manifestly means plain as distinguished from twilled or figured effects produced in the process of weaving. Citing 1 Spon's Encyc. Mfrs., p. 766.

It is true that in this case the utterance was a dictum, but in G. A. 5035 (T. D. 23386), in the matter of the protests of the present appellant and others, it was distinctly ruled that the definition

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referred to in the case above cited indicates what are not plain woven fabrics, namely, those having twilled or figured effects produced in the process of weaving, and it was held that twilled burlaps were not included under the term "plain woven."

Again, in G. A. 6063 (T. D. 26445), the board held that twilled bagging was not plain woven, again holding that the term "plain woven," as used in the tariff act, was in contradistinction from twilled or figured effects produced in the process of weaving. This construction appears to have been followed while the act of 1897 remained in force. The presumption is very strong that, in reenacting this provision for plain woven fabrics, Congress intended to adopt the construction which had thus been given to it. See United States *v.* Cerecedo (209 U. S., 337), and United States *v.* Falk (204 U. S., 143).

The decision of the Board of General Appraisers, which sustained the action of the collector, is *affirmed.*

(T. D. 32055.)

Hair clippers.

SEARS, ROEBUCK & CO. *v.* UNITED STATES (No. 724).

STEEL HAIR CLIPPERS NOT MACHINE TOOLS.

"Machine" in machine tools connotes the application of some kind of power in the operation of an implement other than hand power alone; and steel hair clippers are not to be deemed machine tools and dutiable as such, but are dutiable as steel not specially provided for, under paragraph 199, tariff act of 1909.

United States Court of Customs Appeals, November 22, 1911.

APPEAL from Board of United States General Appraisers, Abstract 26164 (T. D. 31774).

[Decision affirmed.]

Lester C. Childs for appellants.

Wm. L. Wemple, Assistant Attorney General (*Martin T. Baldwin* on the brief), for the United States.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

MARTIN, Judge, delivered the opinion of the court:

The merchandise involved in this case consists of steel hair clippers used by barbers in cutting hair. These instruments are so generally and familiarly known as to require no description here. They were classified by the collector as manufactures of steel not specially provided for and were assessed with duty at 45 per cent ad valorem under paragraph 199 of the tariff act of 1909.

The importers duly filed their protest to this assessment and contended that the articles were assessable either directly or by similitude as machine tools at the rate of 30 per cent ad valorem under paragraph 197 of that act.

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This protest was heard by the Board of General Appraisers and was overruled. The appellants now seek a reversal of the board's decision..

The question thus presented by appellants is whether these steel clippers are machine tools such as are specifically named in paragraph 197 or are manufactures of steel not specially provided for and coming within the provisions of paragraph 199.

The following definitions cited by counsel are taken from dictionaries of approved standing and authority:

Century Dictionary:

Machine tool.—A machine driven by water, steam, or other power for performing operations formerly accomplished by means of hand tools, as planing, drilling, sawing, etc., and taking its special name from the kind of work performed, as planing machine, drilling machine, etc. Also called engine tool.

Tool.— * * * Such machines as the lathe, planer, slotting machine, and others employed in the manufacture of machinery are usually called machine tools.

Standard Dictionary:

Machine tool.—A machine for doing work with cutting tools, or one utilizing minor tools in performing the actual work, as a lathe, planing, drilling, rabbeting, or tenoning machine; also a forming machine; opposed to hand tool.

Tool.— * * * By extension, a machine, as a lathe or a planer, employed in the making of machines. (See Machine tool.)

Webster's Dictionary:

Machine tool.—A complex machine for shaping materials; strictly, an adjustable machine with an automatic feed, for shaping metals by cutting; called also engine tool (1890).

Machine tool.—A machine for cutting or shaping wood, metals, etc., by means of a tool; especially a machine, as a lathe, planer, drilling machine, etc., designed for a more or less general use in a machine shop, in distinction from a machine for producing a special article as in manufacturing (1899).

American Encyclopædic Dictionary:

Machine tool.—A machine in which the tool is directed by guides and automatic appliances. It is a workshop appliance for operating upon materials in the way of shaping and dressing, having devices for dogging the stuff and feeding the tool. Among the tools of this class for working in metal may be enumerated the lathe and machine for planing, slotting, drilling, punching, and shearing. Machine tools for wood are lathes, saws of various kinds, machines for planing, molding, boring, mortising, dovetailing, rabbeting, tenoning, shaping, etc.

Knight's American Mechanical Dictionary:

Machine tool.—A machine in which the tool is directed by guides and automatic appliances, aptly called by Dr. Barnard "a mechanical artisan" with "iron arms." It is a workshop appliance for operating upon materials in the way of shaping and dressing, having devices for dogging the stuff and feeding the tool. Among tools of this class for working in metal may be enumerated the lathe and machines for planing, slotting, shaping, drilling, punching, and shearing. Machine tools for wood are lathes, saws of various kinds, machines for planing, molding, boring, mortising, dovetailing, rabbeting, tenoning, shaping, etc.

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Spon's Dictionary of Engineering, page 2322:

Those machines used in the finishing and fitting of machinery, after the more important operations of either forging or casting the rough material have been effected, are collectively designated as machine tools. * * *

Although machine tools form an essential portion of the equipment in any machine shop, the circumstances under which they have to be designed are so various as to prevent the adoption of but very few standard tools, and the complex nature of their action is indicated by the diversity shown in their construction.

Goodchild and Tweney's Technical and Scientific Dictionary (1906):

Machine tool.—A general term for machines used in engineering and allied work, *e. g.*, planing, slotting, shaping, milling machines, etc.

Machine shop.—The part of an engineering works in which the lathes and other machine tools are worked, as distinguished from the erecting and fitting shops.

It appears from these definitions that it is rather doubtful whether the term "machine tool" may be properly applied to such tools as are used in cutting hair or performing like services. The term seems rather to apply to such tools only as are used in mechanical work dealing with wood, metal, or stone. But however that may be, the term certainly always connotes the application of some kind of power to an implement or tool for its use and operation other than hand power alone. As is stated in the Standard's definition above given, the term is "opposed to hand tool." Both the Standard and Century definitions make it synonymous with engine tool. Such an instrument as a barber's hair clipper would not therefore come within the definition of the term machine tool in either of the foregoing particulars.

In the case of Myers *v.* United States (1 Ct. Cust. Appls., 226), this court had before it certain floor planers which it held to be machine tools within the meaning of that term as used in paragraph 197 of the present tariff act. The planers involved in that case were used for the purpose of planing wood floors. They bore a general resemblance to lawn mowers, and when in operation were moved over the floor by hand. The planing was done by steel knives which revolved upon a shaft in somewhat the same manner as knives of a lawn mower revolve. The power which propelled the knives came from an electric motor which was connected with the implement by wires. The machine performed work which would otherwise be accomplished by workmen using hand planes upon the floor. In the decision of the case just set out, Montgomery, presiding judge, says in conclusion:

We think, however, that within common understanding this implement is a tool to which power is applied and comes within any proper definition of a machine tool.

The line of reasoning pursued in the above-named case is authority for the conclusion reached in this.

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In the case of Sheldon *v.* United States (T. D. 31657) this court held that such hair clippers as those in question are not "shears," but are manufactures of steel not specially provided for, and therefore properly assessable under paragraph 199 of the tariff act of 1909. In that case the question made by the importer's protest was whether or not such clippers were "shears," and the contention presented by the appellants in this case that such articles are machine tools was not made in the case. Therefore that decision is not conclusive of the present issue.

However, upon the reasons and authorities above given the articles in question are held not to be machine tools as claimed by appellants, and they are therefore yet left within their former classification as manufactures of steel not specially provided for. This classification as made by the board is therefore approved, and its decision is *affirmed*.

(T. D. 32056.)

Denaturing olive oil.

TREASURY DEPARTMENT, *December 4, 1911.*

To collectors of customs and others concerned:

T. D. 29976, relating to the denaturing of olive oil, is hereby amended to provide that to every 50 gallons of olive oil there be added 12 ounces of oil of rosemary, full strength. The use of the crude oil is deemed preferable for the reason that the amount of taste and odor which it would impart to the olive oil is greater in the crude than in the refined oil.

JAMES F. CURTIS, *Assistant Secretary.*

(T. D. 32057.)

Onionskin, imitation onionskin, and manifold papers.

Onionskin, imitation onionskin, and manifold papers dutiable under paragraph 413, tariff act of 1909.

TREASURY DEPARTMENT, *December 5, 1911.*

SIR: I have to acknowledge the receipt of your letter of November 21, 1911, in which, referring to the department's instructions of September 27, 1911 (T. D. 31885), relative to the proper classification of various thin papers, you submit a report from the appraiser, from which it appears that imitation onionskin and manifold papers weighing 10 pounds and over per ream of 480 sheets (20 by 30 inches), equivalent to 6¼ pounds per 180,000 square inches, are advisorily returned for duty by his office at the rate of 3 cents per

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pound and 15 per cent ad valorem under paragraph 413 of the tariff act, and have been so returned since the enactment of the present tariff act.

It further appears that in the classification of this merchandise you follow the appraiser's advisory return, and as paragraph 413 of the tariff act provides *eo nomine* for manifold and onionskin and imitation onionskin papers, your practice in this regard is approved. The department's instructions in T. D. 31885 that papers represented by samples E and F should be assessed with duty as papers not specially provided for under paragraph 415 at the rate of 30 per cent ad valorem were based upon the department's belief that they were incorrectly described and were not in fact manifold and onionskin and imitation onionskin papers. T. D. 31885 is modified accordingly.

Respectfully,
(88552)
COLLECTOR OF CUSTOMS, *New York.*

JAMES F. CURTIS,
Assistant Secretary.

(T. D. 32058.)

Notations on entries.

Entries bearing notations by importers that additions were made under duress should not be accepted.

TREASURY DEPARTMENT, *December 5, 1911.*

SIR: The department is in receipt of your letter of September 25 last, reporting in relation to the practice at your port in regard to the acceptance of entries bearing notations explanatory of the reasons why additions are made by importers to make market value, especially in cases where the importers claim the right to note on their entries that the additions are made under duress and solely to avoid additional duty and to avoid detention of the merchandise.

The right to make such notations is claimed by importers under the decisions of the United States Court of Customs Appeals in the cases of S. Stein & Co. *v.* United States (T. D. 31007 and T. D. 31525), which cases involve the validity of an appraisement proceeding, wherein it was alleged by the importers that a commission of 2½ per cent on certain woolens and worsteds from England was improperly assessed for duty; that they had presented entries to the collector bearing the notation "add 2½ per cent commission under duress," which were refused; and that they then filed other entries with the following notations, "add 2½ per cent to make market value," which were accepted. The court held that the commission was a nondutiable item, and found that the addition of 2½ per cent commission

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was made by the importers on the said entries through fear that if they did not add such item upon entry it would be added by the appraiser, and that such additions were, therefore, in fact made under duress.

Where the value of merchandise has been advanced by the appraiser and the importers add on subsequent entries of similar merchandise to make the entered value of such merchandise equal to the appraised value of prior importations of merchandise of the same character, and note on such entries that the additions are made under duress and to avoid additional duty, there would appear to be no conditions present to sustain the claim that the additions were made under duress. It would rather appear to be the purpose of the importers in making such notations on their entries to avoid the payment of the additional duties which would accrue if their merchandise should be advanced by the appraiser and at the same time to avoid the application of the provision of subsection 7 of section 28 of the tariff act that duty shall not be assessed upon less than the entered value, a procedure that, in the department's opinion, is not contemplated by or permissible under the tariff laws

Foreign market values are subject to fluctuation, and it is not certain that because the appraiser has made an advance to make market value upon one entry of merchandise, he will make the same advance upon subsequent entries. An addition on entry made under such circumstances can not therefore be considered as made under duress, even if the decisions above cited could be construed as holding that importers had the right to make such notations on entry; for the collector to accept entries with the notation above referred to thereon might be construed as an admission on his part that the addition on entry was in fact made under duress. The department is, therefore, of the opinion that entries bearing such notations should be rejected.

It is further of the opinion, however, that there is nothing in the customs laws or regulations to prevent an importer from making any notations on his entries to show his purpose in making additions when the acceptance of such entries would not constitute a tacit admission by the collector of recitals the truth of which are denied by him, and that importers may therefore note on their entries that additions are made to make market value to conform to former appraisements or reappraisements of like merchandise, as the case may be.

Such entries should be treated in the same manner as other entries, and duties assessed accordingly.

Respectfully,
(90707)
COLLECTOR OF CUSTOMS, *New York*.

JAMES F. CURTIS,
Assistant Secretary.

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(T. D. 32059.)

Medical treatment of commissioned Revenue-Cutter officers.

[Circular No. 69.]

TREASURY DEPARTMENT,
PUBLIC HEALTH AND MARINE-HOSPITAL SERVICE,
Washington, December 1, 1911.

To commissioned officers, acting assistant surgeons, and others concerned:

The Comptroller of the Treasury, in his decision of October 4, 1911, has ruled that commissioned officers of the United States Revenue-Cutter Service, while receiving medical treatment in hospitals, shall pay reasonable charges for their support or subsistence. A fixed rate of $1 per day will therefore be charged while they are receiving such treatment in marine or contract hospitals, this being the same rate as charged Army officers in the Army Regulations for the same purpose.

Approved: A. H. GLENNAN, *Acting Surgeon General.*
R. O. BAILEY, *Assistant Secretary.*

(T. D. 32060.)

Certain hospital records to be abolished.

[Circular No. 70.]

TREASURY DEPARTMENT,
PUBLIC HEALTH AND MARINE-HOSPITAL SERVICE,
Washington, December 1, 1911.

To commissioned officers, acting assistant surgeons, and others concerned:

Form 1984, Register of Hospital Patients, is hereby abolished, as it is practically a duplicate of the Register of Permits, Form 1983 and also of Form 1919.

Form 1992, Record of Letters and Papers Received, and Form 1993, Record of Letters and Papers Sent, are also abolished, as the information obtained from them is contained in the letter-press copy book of the station.

At stations of the first class the Register of Permits, Form 1983, should be kept at the hospital, instead of at the out-patient office as at present.

Approved: A. H. GLENNAN, *Acting Surgeon General.*
R. O. BAILEY, *Assistant Secretary.*

(T. D. 32061.)

Combination knives and forks.

Combination knives and forks dutiable under paragraph 152, tariff act of August 5, 1909.

TREASURY DEPARTMENT, *December 6, 1911.*

SIR: I have to acknowledge the receipt of your letter of the 28th ultimo, in which you report that it is the practice at your port to

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classify combination knives and forks similar to the sample submitted by the department under paragraph 152 of the tariff act at the rate of 40 per cent ad valorem and 20 cents each as knives with folding blades and attachments valued at over $3 per dozen.

It is reported to the department that there is a variance of practice in the classification of merchandise of this character; that some ports assess duty thereon under paragraph 152, while at other ports the combination knife and fork is treated as an entirety and assessed with duty under paragraph 199 of the tariff act at the rate of 45 per cent. ad valorem. The merchandise under consideration appears to be identical with that the subject of the board's decision of May 31, 1904, G. A. 5693 (T. D. 25335), and described in paragraph numbered 2 of said decision. The board sustained your assessment of duty upon this merchandise under paragraph 153 of the tariff act of July 24, 1897, which corresponds to paragraph 152 of the present tariff act. Following the decision cited, the department is of the opinion that the practice at your port in the classification of this merchandise is in harmony with law and is accordingly approved.

Respectfully, JAMES F. CURTIS,
(92429) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 32062.)

Drawback on artificial silk.

Drawback on artificial silk imported in the gray, dyed for and on account of M. J. Corbett & Co., of New York, by Schnorf & Englert, New Durham, N. J., and others.—T. D. 30539 of April 18, 1910, extended.

TREASURY DEPARTMENT, *December 6, 1911.*

SIR: The department's regulations of April 18, 1910 (T. D. 30539), providing for the allowance of drawback on the exportation of dyed artificial silk imported in the gray and dyed for and on account of M. J. Corbett & Co., of New York, by the William Teschemacher Co., of Brooklyn., N. Y, are hereby extended to cover exportations of silk dyed for and on account of M. J. Corbett & Co., by Schnorf & Englert, New Durham, N. J., Alois Schaetzel, Brooklyn, N. Y., F. P. Maupai, New York, and Herman Maupai, of New York, in accordance with sworn statements to be filed in your office.

Respectfully, JAMES F. CURTIS,
(30255) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 32063.)

Drawback on Wine of Cardui.

Drawback on Wine of Cardui manufactured by the Chattanooga Medicine Co., of Chattanooga, Tenn., with the use of domestic tax-paid alcohol.—T. D. 25228 of April 23, 1904, extended.

TREASURY DEPARTMENT, *December 7, 1911.*

SIR: The department's regulations of April 23, 1904 (T. D. 25228), providing for drawback on Wine of Cardui manufactured by the Chattanooga Medicine Co., of Chattanooga, Tenn., with the use of imported alcohol, are hereby extended, so far as applicable, to cover the exportation of Wine of Cardui manufactured by said company with the use of domestic tax-paid alcohol, in accordance with the manufacturer's sworn statement, dated October 30, 1911, transmitted herewith for filing in your office.

In liquidation, the quantity of domestic tax-paid alcohol that may be taken as a basis for allowance of drawback may equal the quantity consumed as declared in the drawback entry, provided that in no case shall it exceed 20 per cent of the quantity of the merchandise exported.

Respectfully, JAMES F. CURTIS,
(91201.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 32064.)

Revocation of drawback rate on cigarettes.

T. D. 29462 of January 8, 1909, establishing drawback rate on cigarettes manufactured by the American Tobacco Co. of New York, revoked.

TREASURY DEPARTMENT, *December 9, 1911.*

SIR: Referring to department's letter addressed to you under date of January 8, 1909 (T. D. 29462), allowing drawback on cigarettes manufactured by the American Tobacco Co. of New York from Sumatra leaf scrap, I have to inform you that the department is satisfied from investigations conducted in this country and abroad that the cigarettes so manufactured are of no commercial value and that there is no actual market for them, and that consequently the company is not entitled to receive any drawback upon their exportation.

Treasury Decision 29462 is therefore hereby revoked. Liquidation of entries heretofore filed under said decision will be suspended pending further instructions.

Respectfully, JAMES F. CURTIS,
(60396.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 32065.)

Applications for rehearings.

Collectors to report directly to the Assistant United States Attorney General where the board overrules their decisions under paragraphs not relied upon by importers in their protests.

TREASURY DEPARTMENT, *December 9, 1911.*

SIR: The department duly received your letter of the 7th ultimo, in which you invite attention to so much of the decision of the Board of United States General Appraisers of October 21, 1911, Abstract 26923 (T. D. 31940), as overrules your assessment of duty at the rate of 45 per cent ad valorem under paragraph 212 of the tariff act upon certain baskets, the board holding them to be properly dutiable under paragraph 214 of the said act at the rate of 35 per cent ad valorem, notwithstanding the importers made no claim in their protests under paragraph 214.

In reply, I have to advise you that the department is in receipt of a letter from the Assistant Attorney General, dated November 29, 1911, in which he states that as his attention was not called to the matter until after the time for an application for a rehearing had expired he had prepared papers and would file the same with the United States Court of Customs Appeals for a review of the board's decision under consideration.

In view of the fact that the delay resulting from collectors reporting directly to the department in cases of this kind frequently prevents the filing of applications with the board for a rehearing of such cases, you are hereby directed in the future, where the board has overruled your decision under a paragraph of the tariff act not relied upon by the importer in his protest, to report the facts directly to the United States Assistant Attorney General in charge of customs for appropriate action. His address is 641 Washington Street, New York, N. Y.

Respectfully, JAMES F. CURTIS,
(92419.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Chicago, Ill.*

(T. D. 32066.)

Dock books.

TREASURY DEPARTMENT, *December 11, 1911.*

To collectors of customs and others concerned:

A form of inspector's dock book which is required to be kept by article 1474 of the Customs Regulations of 1908 has been adopted for use at all ports in three sizes, viz, 5¼ by 10⅜ inches, 5¼ by 13 inches, 8½ by 14 inches, and given Catalogue Nos. 5969, 5971, 5973, respectively.

A supply of such forms will be furnished upon requisition therefor being made.

JAMES F. CURTIS, *Assistant Secretary.*

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(T. D. 32067.)

United States disbursing officers' checks—Amending Circulars 102 of 1906 and 42 of 1907.

[Circular No. 71.]

TREASURY DEPARTMENT, *December 11, 1911.*

In case of the death, resignation, or removal of any disbursing officer, checks previously drawn y him will be paid from the funds to his credit, unless such checks have been drawn more than four months before their presentation, or reasons exist for suspecting fraud. Any check previously drawn by him and not presented for payment within four months of its date will not be paid until its correctness shall have been attested by the Secretary of the Treasury.

Department circular regulations of December 7, 1906 (No. 102), and June 22, 1907 (No. 42), concerning United States disbursing officers' checks, are hereby amended accordingly.

FRANKLIN MACVEAGH, *Secretary.*

(T. D. 32068—G. A. 7304.)

Naphthalin—Tare.

Naphthalin, being made free of duty by paragraph 536, tariff act of 1909, where such an article in the form of a powder is introduced into bales of wool as a disinfectant, its weight should be deducted from the gross weight of the wool and allowed as tare.

United States General Appraisers, New York, December 4, 1911.

In the matter of protests 379630, etc., of W. E. Allum against the assessment of duty by the collector of customs at the port of New York.

Before Board 3 (WAITE, SOMERVILLE, and HAY, General Appraisers).

SOMERVILLE, *General Appraiser:* The importers in these cases claim a reduction of duty on various bales of wool, based on the fact that there was packed in each bale 6 pounds of naphthalin, and that this should properly be allowed as so much tare.

Naphthalin is a product of coal tar and is made free of duty under paragraph 536 of the tariff act of 1909. It is in the form of a powder as here used and was intended as a disinfectant, being introduced by order of the American consul general. Hence the protests are tenable, if the evidence sustains the claim.

We sustain the objection taken by the Government to the admission of the memorandum of Mackenzie & Co., dated Shanghai, April 13, 1911, certifying that they had packed certain bales of wool and placed 6 pounds of naphthalin in each bale prior to shipment. This covers the following importations:

Protest.	Mark.	Nos.	Quantity.	Date.
379630	W S W	934/1027	94 bales wool	Nov. 11, 1908
379631	W S W	1168/1277	110 bales wool	Nov. 24, 1908
381298	W S W	1309/1358	50 bales wool	Dec. 29, 1908
			254 bales wool.	

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This certificate is mere hearsay evidence, uncorroborated by any legal proof which in any manner tends to sustain it. All other objections to the evidence are overruled.

The protests, with the exception of those above named, are all sustained and the collector's decision reversed, with instructions to reliquidate the entries accordingly. Said protests 379630/1 and 381298 are, however, overruled.

(T. D. 32069—G. A. 7305.)

Scrap iron.

1. SCRAP IRON—WASTE—JUNK.

The term "waste" is a generic term and includes scrap metal and junk. Scrap metal is a species of junk.

2. OLD MILL SHAFTS—SCRAP IRON—JUNK.

Old broken up iron mill shafts, fit for remanufacture by rerolling or hammering, are excluded from the provision in paragraph 118, tariff act of 1909, for "scrap iron * * * fit only to be remanufactured by melting," and are free of duty as "junk, old," under paragraph 600 of said act.

United States General Appraisers, New York, December 4, 1911.

In the matter of protest 434632 of A. D. Strauss & Co. against the assessment of duty by the collector of customs at the port of New York.

Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers).

FISCHER, *General Appraiser:* The articles here in question consist of old broken up bull shafts, the said pieces of old shafting having been collected from broken-down machinery in old sugar mills. The local appraiser reports that upon examination of the merchandise he found it to be "second-hand iron shaftings, varying in size and fitted to be rerolled or hammered, and better than scrap iron fit only for manufacture by melting."

The collector assessed duty against the importation at the rate of 45 per cent ad valorem as manufactures of metal not specially provided for under the provisions of paragraph 199, tariff act of 1909. The importers claim, alternatively, that the old scrap metal is free of duty under paragraph 600 as "junk, old;" that it is dutiable as waste, not specially provided for, at 10 per cent ad valorem under paragraph 479; that it is dutiable at $1 per ton under paragraph 118 as scrap iron or steel; that it is dutiable at 30 per cent ad valorem under paragraph 123 as forgings of iron or steel; or that it is dutiable as mill shafting or as castings at appropriate rates under paragraph 131 or 147.

The importation is one of scrap metal, but the old metal is "fitted to be rerolled or hammered, and better than scrap iron fit only for manufacture by melting." This report of the local appraiser confirms the importers' contention that the old metal can be remanufactured by other than the melting process, and that it can be put into

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form for reuse by being forged over again, by being rolled or hammered. This scrap is therefore excluded from the provision for such scrap iron or scrap steel as is "waste or refuse iron or steel, fit only to be remanufactured by melting," paragraph 118. Benjamin's case (T. D. 31677).

The metal forms were originally produced by the forging process, and are invoiced as "shafting." If not scrap, or waste, or junk, old, and still manufactured articles, they would be dutiable as forgings under paragraph 123 or as mill shafting under paragraph 131, and in no event under paragraph 199, as assessed, for forgings and mill shafting are specially provided for. The proof establishes that the importation is one of old metal pieces of shafting which are so broken, worn, and damaged as to be unfit for the uses for which they were originally manufactured, and it is clear that they are commercially of use only as material to be remanufactured. This would exclude the metal from classification under paragraph 123, 131, or 147.

We are now concerned with claims raised as to "waste, not specially provided for," and "junk, old." The designation "waste" is a generic term, and it no doubt includes scrap and junk. As rags is a special kind of waste, so junk is a specially provided class of waste given the benefit of free entry under a provision for "junk, old," and if we go further we find that scrap iron or steel is a specifically designated class of junk for which provision is made in paragraph 118, when "fit only to be remanufactured by melting."

The trade or commercial understanding of the terms "waste" and "junk" are not shown to vary from or to be other than the definitions of such words as given lexicographically. The Century Dictionary defines junk as—

> Worn-out and discarded material in general that may be turned to some use; especially, old rope, chain, iron, copper, parts of machinery, and bottles, gathered or bought up by tradesmen called junk dealers; hence, rubbish of any kind; odds and ends.

The Standard Dictionary defines the term as—

> Cast-off material of any sort that can be put to some use; odds and ends, as scrap iron, old bottles, or paper.

The term "waste" is defined in like manner as "cast aside as worthless or of no practical importance; spoiled or made of no value in manufacture or use" (Standard Dictionary), and we may refer to the following reference as to "waste" made in Patton *v.* United States (159 U. S., 500, 503):

> The prominent characteristic running through all these definitions is that of refuse or material that is not susceptible of being used for the ordinary purposes of manufacture. It does not presuppose that the article is absolutely worthless, but that it is unmerchantable and used for purposes for which merchantable material of the same class is unsuitable.

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It is apparent that the scrap is old waste pieces of iron or steel, and incapable of being further used except to be remanufactured. It is worthless for any other use. So the old metal would no doubt answer to the meaning of the terms "waste" and "junk." This kind of old junk, being provided for under paragraph 600, is therefore not dutiable as "waste, not specially provided for," but classifiable as "junk, old."

As we said in G. A. 7003 (T. D. 30489), worn-out metal articles unfit for other than remanufacturing purposes, though scrap, would not fall within the provision for scrap iron or steel if fit for remanufacture by processes other than melting. We further said there can be no doubt that a waste or refuse metal excluded from the scrap-iron and the scrap-steel paragraph and fit only for remanufacture, can no longer be considered a "manufacture," and is of necessity relegated to the provisions of the tariff act for "waste, not specially provided for," or for "junk, old." We find the merchandise here in question to be junk, old, and we sustain the claim for free entry. Note Sheldon *v.* United States (159 Fed. Rep., 105; T. D. 28602). The collector's assessment is hereby reversed.

(T. D. 32070—G. A. 7306.)

Dutiable value.

[NOTE.—The decisions published in the weekly Treasury Decisions as T. D. 32070—G. A. 7306 and Abstracts 27284 and 27285 have been merged and appear as T. D. 32107—G. A. 7309.]

(T. D. 32071—G. A. 7307.)

Nonimportation and damage allowances—Act of 1909—Subsection 22 of section 28—Jurisdiction of board.

1. METHOD OF PROCEDURE PRESCRIBED.

When fruit or other perishable articles are imported under the present tariff act of 1909, the method of ascertaining the amount of an article so decayed or destroyed that is not subject to any duty is provided for by subsection 22 of section 28 of said act, and the regulations of the Secretary of the Treasury made to carry out the provisions of the statute, as found in T. D. 30023.

2. SUCH METHOD EXCLUSIVE.

This statute and the regulations apply as well to losses by reason of nonimportation or shortage as to losses by damage or condemnation by health boards. And the methods there prescribed are exclusive of all other methods, and unless such regulations are complied with by importers no recovery can be had.

3. THE FINDINGS OF EXAMINERS AS REPORTED FINAL.

The findings of the examiners detailed to investigate claims under said statute, as reported by the appraiser, are final and conclusive, and will not be reinvestigated by the board on protest filed by the importer.

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4. No Jurisdiction of Board.

Such protests should be dismissed by the board on appeal for want of jurisdiction.

5. Protest Overruled.

The majority of the board are of opinion that although the regulations of the Secretary are not properly complied with the board has jurisdiction of the protest, and in this case it should be overruled and not dismissed.

United States General Appraisers, New York, December 4, 1911.

In the matter of protest 425560 of Maynard & Child against the assessment of duty by the collector of customs at the port of Boston.

Before Board 3 (Waite, Somerville, and Hay, General Appraisers.)

Somerville, *General Appraiser:* The importation consists of 1,816 bags of turnips. The importers claim in their protest that under subsection 22 of section 28 of the tariff act of 1909 they are entitled to an allowance for "injury to the goods, having made claim within 48 hours after the arrival of the vessel."

The collector in his letter makes the following report:

The records of this office show that these importers made a claim for allowance on account of damage, which claim is inclosed herewith, attached to the invoice, and allowance was made in liquidation under T. D. 30023, on the percentage of damage found by the appraiser, viz, 10 per cent.

The following is the form of notice filed with the collector on February 4, 1910:

To the collector of customs:

Notice is hereby given that the undersigned [importers] claim an allowance for decay upon the following-described fruit consigned to order per steamship *America*, which arrived at 9 o'clock a. m. on the day of February 4, 1910, and you are hereby requested to cause an examination of said fruit to be made to determine what allowance shall be made on account of decay therein upon liquidation of entry 3958 covering the same.

Then follows the description of the merchandise as "1,816 bags of turnips."

The application follows the form prescribed by the Treasury Regulations in T. D. 30023 for an allowance for a shortage or nonimportation of "fruits or other perishable articles."

Said subsection 22 of section 28, so far as pertinent, reads as follows:

No allowance shall be made in the estimation and liquidation of duties for shortage or nonimportation caused by decay, destruction or injury to fruit or other perishable articles imported into the United States whereby their commercial value has been destroyed, unless under regulations prescribed by the Secretary of the Treasury.

The said regulations referred to above (T. D. 30023), made in pursuance of the foregoing authority, provided in part as follows:

Upon receipt of such notice, the collector will at once direct the appraiser to detail one or more examiners to make an examination of such fruit to determine the percentage of decay therein. Such examiner shall proceed promptly to select and set aside representative packages consisting of at least 5 per cent of each lot or mark, and will open and examine the same to determine the percentage of decay in the

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fruit contained therein. The appraiser shall make a return of such examination to the collector within 10 days after the landing of the merchandise, specifying the number of packages examined, the marks and numbers thereof, and the percentage of rotten and worthless fruit contained therein. The percentage of rotten and worthless fruit returned by the appraiser as found in the packages so examined shall be considered as the percentage of such fruit contained in the entire importation, and an allowance will be made accordingly in the liquidation of the entry.

The regulations further prescribe the course of procedure for the examination of imported fruit or other perishable goods which have been condemned by health officers. It is still further provided under the head of "abandonment" as follows:

No allowance shall be made for damage to any imported merchandise, other than the allowance above provided for upon imported fruits and other perishable goods, on the ground of nonimportation.

At the hearing before the board the importers introduced as a witness one Hollingsworth, the same examiner who was detailed by the appraiser to make the examination in question. The witness reaffirmed the correctness of his report that the amount of decay or rot ascertained was 10 per cent of the importation. The question was asked: "Besides the damage by rot which you reported, had those turnips in any way been injured?" Answer. "Those turnips were badly frozen."

The following questions were further asked:

Q. What part of them were damaged by freezing?—A. I should think from freezing the damage would be two-thirds; that is, their value has decreased two-thirds at least by freezing.

Q. The quantity—did you think two-thirds of them were frozen?—A. I think that almost all of them were frozen, sir; but although they were frozen they had not lost all their value.

Q. Was this damage by rotting and freezing before they were landed?—A. I think so, sir. I examined them when they were first coming out of the ship, and only a part of them were salable; I found them nearly all frozen, and I kept watch of them as they kept bringing them out—they were nearly all frozen.

The witness further stated that the great majority of the turnips were not fit for human food. He further said that in his opinion the total amount of damage by the freezing and rotting together might be 75 to 85 per cent.

One of the importers who was introduced as a witness stated that the turnips had been sold, and he introduced a paper covering a report of sale, which was admitted in evidence and marked Exhibit 1. The amount realized at an auction sale of these goods seems to have been $235.98.

This case, in our judgment, raises the question as to the distinction, often very narrow, between a nonimportation or shortage on the one hand and of damage on the other. This question is treated of by the Court of Customs Appeals in the case of United States *v.* Habicht

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& Co. (1 Ct. Cust. Appls., 53; T. D. 31031), the opinion being rendered by De Vries, Judge. The following language is used:

The statutes and Treasury regulations made in conformity therewith contemplate two conditions affecting merchandise such as this: First, merchandise that has been damaged but not entirely destroyed, but which still possesses some commercial value; and, secondly, merchandise, or a portion thereof, which had been commercially destroyed before it was brought within the customs district.

For the enforcement of the rights of the importers in these cases Congress has specifically prescribed methods of procedure. That Congress has plenary power in this particular has been uniformly held from the foundation of the Government. It has never been seriously disputed that in matters of claims against the United States full power rests in Congress to determine and legislate exactly as to the methods of determination of these controversies, and the modes prescribed by Congress measure the rights of the citizen.

Various authorities are cited in support of this proposition. It was further observed as follows:

Section 23 of the customs administrative act of 1890, as amended July 24, 1897, prescribes a method of relief for the importer for the recovery of duties paid upon merchandise which has been damaged. It is expressly provided in that section that such recovery shall be had after compliance with the rules and regulations made by the Secretary of the Treasury for the enforcement of such rights.

The result reached by the court was that the method then prescribed by law for the ascertainment of a damage allowance was exclusive and must be asserted in accordance with the regulations of the Secretary of the Treasury. It was further held that the making of a claim for damage by the importer did not, as the law then existed, preclude him from also making in a proper case by protest a claim for nonimportation or shortage under section 14 of the customs administrative act of 1890, and that invoking one of these remedies would not under the act of 1897 preclude the importer from concurrently invoking the other, recovery to be had under the one or the other of these claims according to the facts of the case. That principle no longer applies under the new tariff act of 1909, for reasons hereafter stated. The case of Lawder *v.* Stone (187 U. S., 281) is referred to by the court as showing the proper distinction between a nonimportation resulting from the destruction of fruit and a mere damage of it, where the imported article still retains some commercial value.

Under the present tariff act of August 5, 1909, a new principle has been introduced. The principle settled in Lawder *v.* Stone (187 U. S., 281) has been abrogated so as to abolish all allowances by way of deduction of duties for decayed fruit or other "perishable articles" either caused by damage or constituting a nonimportation, unless in compliance with statutory requirements and the regulations of the Secretary of the Treasury made to carry out these provisions of the

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law. Conkey's case, G. A. 6997 (T. D. 30446), tariff act August 5, 1909, subsection 22 of section 28; Regulations of Secretary (T. D. 30023).

These regulations are made to cover cases of nonimportation whether produced by failure to arrive, or proved by condemnation of health authorities, or losses by damage prior to importation.

Under the principle declared by the Court of Customs Appeals in the case above cited, and according to every well-settled rule of law, these methods as there presented are exclusive of all methods of ascertaining the facts designed to be ascertained, and hence a compliance with them is a condition precedent to any recovery by the importers.

Under the new law and regulations applicable to importations of fruit and other perishable articles made under the act of 1909, we repeat the method for ascertaining allowances caused by decay, destruction, or injury to imported fruit and other perishable articles is specifically provided for, as well in cases involving a shortage or nonimportation as to cases of damage. Hence these methods must be held to be exclusive, and a failure to comply with the regulations of the Secretary for the enforcement of the importer's claim, whether for nonimportation or damage, is fatal to any recovery. The validity of these regulations can not be successfully challenged.

In this case the rot in the fruit as ascertained by the examiner, which utterly destroyed its value to the extent of 10 per cent, was properly allowed by the collector as a shortage or nonimportation. The remainder of the merchandise, which is shown to have had some commercial value and was placed on the market by the importers, is clearly in the nature of a damage and not of a shortage. The turnips arrived, but in a damaged condition, their merchantable character not having been entirely destroyed and the articles not being absolutely worthless, as were the pineapples reduced to slush in the case of Lawder *v.* Stone, cited *supra*. The claim of the importers in their protest seems to be a claim for damage and not for shortage. But this is immaterial. The allowance made by the collector of 10 per cent for rot, in our judgment, is all to which the importers are entitled. They can not, in our judgment, challenge the result reached by the examiner under the exclusive procedure prescribed by the Secretary of the Treasury. The examiner was appointed for the specific purpose of examining the fruit. His inspection of it enabled him to come to a proper conclusion pursuant to the power vested in him by statute.

The articles, having gone into consumption, are not available for examination before the Board of General Appraisers, and hence it is not contemplated by the statute that their judgment would be

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set up on review to reverse the conclusions reached by an officer who actually examined the goods under a power given him by statute.

If it should be objected that the examination of at least 5 per cent of each importation, as provided for in these regulations, is insufficient, it may be said that some discretion is delegated to the Secretary in this particular, and it has been exercised in the manner indicated. We are of opinion that this is a reasonable provision, as the quantity of fruit imported is vast and the number of examiners authorized to pass on the question is limited, so that it would be impracticable to increase them for this purpose. It is only recently that the Government has undertaken to make any examination at all. The result reached would be only approximate, and this is all that can be required under the circumstances. Hence the statement made in the regulations:

> The percentage of rotten and worthless fruit returned by the appraiser as found in the packages so examined shall be considered as the percentage of such fruit contained in the entire importation, and an allowance will be made accordingly in the liquidation of the entry.

This being the case, we hold that the regulation is reasonable and valid. And it has been held by the Circuit Court of Appeals, and often by the board, that where authority to make a regulation is delegated to the Secretary of the Treasury and he exercises this authority in a reasonable manner, the board has no power to overrule it, and that the proof can be made in no other way than as authorized by him. His action is final and conclusive.

It has been held by the board in Conkey's case, G. A. 6997 (T. D. 30446), that it was clearly the purpose of this statute to abolish all allowances or deduction of duties either in the case of shortage, nonimportation, or of damage on imported fruits or other perishable merchandise, "except on the condition precedent of a compliance with the provisions of said subsection 22 of section 28 of the tariff." This would be true, although there were no regulations in existence to carry out the provisions of the statute. Dunlap *v.* United States (173 U. S., 65; 19 Sup. Ct. Rep., 319); *In re* Buhl-Mills Co., G. A. 7180 (T. D. 31349).

The mode of proof provided for by law or by lawful regulations of the Treasury Department would be exclusive, and no other evidence can be substituted for it. United States *v.* Dominici (78 Fed. Rep., 334; 24 C. C. A., 116); Dutilh *v.* Maxwell (2 Blatch., 548, 551).

There has been in this case no compliance with the regulations of the Secretary of the Treasury, and for this reason we are of opinion that the board has no jurisdiction.

The protest should be dismissed for want of jurisdiction, leaving the action of the collector to stand.

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WAITE, *General Appraiser:* I agree with the opinion of my colleague, Judge Somerville, in holding that the action of the collector in this case should be undisturbed. I do not, however, think the protest should be dismissed for want of jurisdiction. The claim made seems to be for an allowance for damage, which can only be allowed on abandonment. No abandonment was claimed or made as provided by statute. Even if the protest could be interpreted into a claim for destruction and nonimportation, the importer has offered no proof that the amount should be more than the 10 per cent which was allowed by the collector on the report of the appraiser.

I do not concur in the findings as enumerated in the third and fourth syllabi, to wit:

3. The findings of the examiner detailed to investigate claims under said statute as reported by the appraiser are final and conclusive and will not be reinvestigated by the board on protest filed by the importer.

4. Such protest should be dismissed by the board on appeal for want of jurisdiction.

The case arises over the importation of 1,816 bags of turnips. Duty was assessed under paragraph 269 of the law of 1909 at 25 per cent ad valorem. The importer's claim is here treated as one of destruction or nonimportation under subsection 22 of section 29 of the law of 1909. That section reads as follows:

SEC. 22. No allowance shall be made in the estimation and liquidation of duties for shortage or nonimportation caused by decay, destruction or injury to fruit or other perishable articles imported into the United States whereby their commercial value has been destroyed, unless under regulations prescribed by the Secretary of the Treasury. Proof to ascertain such destruction or nonimportation shall be lodged with the collector of customs of the port where such merchandise has been landed, or the person acting as such, within ten days after the landing of such merchandise. The provisions hereof shall apply whether or not the merchandise has been entered, and whether or not the duties have been paid or secured to be paid, and whether or not a permit of delivery has been granted to the owner or consignee. Nor shall any allowance be made for damage, but the importers may within ten days after entry abandon to the United States all or any portion of goods, wares or merchandise of every description included in any invoice and be relieved from the payment of duties on the portion so abandoned: *Provided*, That the portion so abandoned shall amount to ten per centum or more of the total value or quantity of the invoice. The right of abandonment herein provided for may be exercised whether the goods, wares or merchandise have been damaged or not, or whether or not the same have any commercial value: *Provided, further*, That section twenty-eight hundred and ninety-nine of the Revised Statutes, relating to the return of packages unopened for appraisement, shall in no wise prohibit the right of importers to make all needful examinations to determine whether the right to abandon accrues, or whether by reason of total destruction there is a nonimportation in whole or in part. All merchandise abandoned to the Government by the importers shall be delivered by the importers thereof at such place within the port of arrival as the chief officer of customs may direct, and on the failure of the importers to comply with the direction of the collector or the chief officer of customs, as the case may be, the abandoned merchandise shall be disposed of by the customs authorities under such regulations as the Secretary of the Treasury may prescribe, at the expense of such importers.

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Where imported fruit or perishable goods have been condemned at the port of original entry within ten days after landing, by health officers or other legally constituted authorities, the importers or their agents shall, within twenty-four hours after such condemnation, lodge with the collector or the person acting as collector, of said port, notice thereof in writing, together with an invoice description and the quantity of the articles condemned, their location, and the name of the vessel in which imported. Upon receipt of said notice the collector, or person acting as collector, shall at once cause an investigation and a report to be made in writing by at least two customs officers touching the identity and quantity of fruit or perishable goods condemned, and unless proof to ascertain the shortage or nonimportation of fruit or perishable goods shall have been lodged as herein required, or if the importer or his agent fails to notify the collector of such condemnation proceedings as herein provided, proof of such shortage or nonimportation shall not be deemed established and no allowance shall be made in the liquidation of duties chargeable thereon.

It will be seen that the statute above quoted assumes to provide for allowance for loss arising from the importation of perishable goods under three different heads: First, when there is a total destruction in transit, so there is no importation; second, when there is damage to the goods suffered, but still importation takes place; and, third, where goods are condemned by the health authorities, which I assume may take place whether there is total destruction or slight damage, all depending upon whether the presence of the goods is a menace to the health of the community.

I dissent from the interpretation of the law by my colleague under the first head, *i. e.*, where there is a claim for allowance of total destruction and consequent nonimportation.

Under the authority of the statute the Secretary of the Treasury promulgated (T. D. 30023) the following regulation, providing for allowance when there is destruction and nonimportation:

In order to obtain an allowance on account of shortage or nonimportation caused by decay, destruction, or injury to imported fruit, under the said provisions of law, the importers shall, within 48 hours after the arrival of the importing vessel, give notice in writing to the collector of customs of their intention to claim such allowance, which notice shall be in the following form:

PORT OF ——— ———,
——— ———, 19—.

To the collector of customs:

Notice is hereby given that the undersigned claim an allowance for decay upon the following-described fruit consigned to ———, per S. S. ———, which arrived at ——— o'clock — m., on the ——— day of ———, 19—, and you are hereby requested to cause an examination of said fruit to be made to determine what allowance shall be made on account of decay therein upon liquidation of entry No. —, covering the same: [Then follows description and signature.]

Upon receipt of such notice, the collector will at once direct the appraiser to detail one or more examiners to make an examination of such fruit to determine the percentage of decay therein. Such examiner shall proceed promptly to select and set aside representative packages consisting of at least 5 per cent of each lot or mark, and will open and examine the same to determine the percentage of decay in the fruit contained therein. The appraiser shall make a return of such examination to the collector within ten days after the landing of the merchandise, specifying the

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number of packages examined, the marks and numbers thereof, and the percentage of rotten and worthless fruit contained therein. *The percentage of rotten and worthless fruit returned by the appraiser as found in the packages so examined shall be considered as the percentage of such fruit contained in the entire importation, and an allowance will be made accordingly in the liquidation of the entry.*

I do not think this is such a regulation as was contemplated by the statute. The language, "the percentage of rotten and worthless fruit returned by the appraiser as found in the packages so examined shall be considered as the percentage of such fruit contained in the entire importation, and an allowance will be made accordingly in the liquidation of the entry," is taken by my colleague to authorize an *ex parte* proceeding, and the determination of the amount of destruction is to be based solely upon the examination made by the examiner or examiners detailed for that purpose, thus excluding any proof which may be offered by the importer. My judgment is that the law contemplated that a regulation should be made whereby proof, both by the importer and by the Government, could be lodged as to the amount of destruction, upon which proof the collector is to determine that question as any other question of fact might be determined; and his finding being a question of fact touching the rights of the importer may be appealed from to the board as authorized under subsection 14, section 28, of the law of 1909. I think the language of the statute, "proof to ascertain such destruction or nonimportation shall be lodged with the collector of customs of the port where such merchandise has been landed, or the person acting as such, within ten days after the landing of such merchandise," means that the importer may lodge such proof and have it considered together with the proof furnished by the Government examiners. If no proof is furnished by the importer, then of necessity the case must be determined upon the report of the appraiser as to the amount which shall be allowed on the importation.

The very fact that this question may be determined by an examination of 5 per cent of the goods, as provided in the regulation, leads to the conclusion that if it is to be an *ex parte* proceeding, decided entirely upon the proof furnished by the Government, the proof may well be considered entirely inadequate from which to make a determination, and certainly it ought to be open to the importer to offer proof as to the whole shipment if he so desires, or any greater quantity than that selected under the regulation. Five per cent of each lot might prove absolutely nothing with reference to the amount of decay. Where the goods are selected from the whole cargo, 1 package in 20, the proof might well show that either the whole cargo was decayed or that none was decayed, and the facts be decidedly to the contrary.

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I do not think Congress intended to give an opportunity to the importer to furnish his proof and then allow his claim to be defeated because his proof was not considered. Neither do I think it was intended that the right of the importer should depend upon the whim or pleasure of the Government to furnish proof of the decay or destruction, as there is nothing to compel the collector to lodge proof. It is indeed contemplated that there may be neglect to lodge proof, in which case, of course, the finding of the collector would be sustained. The language of subsection 22 before referred to is significant upon this point. Toward the end of that section we read:

> And unless proof to ascertain the shortage or nonimportation of fruit or perishable goods shall have been lodged as herein required * * * proof of such shortage or nonimportation shall not be deemed established, and no allowance shall be made in the liquidation of duties chargeable thereon.

And again we read:

> That section twenty-eight hundred and ninety-nine of the Revised Statutes, relating to the return of packages unopened for appraisement, shall in no wise prohibit the right of importers to make all needful examinations to determine * * * whether by reason of total destruction there is a nonimportation in whole or in part.

Such language is without force or meaning if the examination is to avail the importer nothing or if the proof he gathers from such examination is to be ignored, and the determination made, nevertheless, on the basis of the examination made by the Government, as provided by the regulation.

These provisions, it seeems to me, are entirely at variance with the idea that the proceedings before the collector are *ex parte*, and that the percentage of rotten and worthless fruit returned by the appraiser as found in the packages so examined should be considered as the percentage of such fruit contained in the entire importation, as found in the regulation above quoted. Hence, I am of the opinion that the regulation so far as it refers to this class of goods is unreasonable and contrary to the intent of the statute. A finding should be made upon the whole evidence lodged within the specified time, and the board would get jurisdiction of the case on the filing of a protest against the conclusion of the collector, and the protest should not be dismissed by the board for want of jurisdiction.

HAY, *General Appraiser:* I believe the Board of General Appraisers have jurisdiction to hear and decide all of the issues arising in this case, including the construction and validity of the regulations made by the Secretary of the Treasury, but from the facts as disclosed by the record I think the protest should be overruled.

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(T. D. 32072—G. A. 7308.)

Abandonment.

ABANDONMENT BY IMPORTER—LIABILITY FOR DUTIES AS AFFECTED BY.

An importer can not, by exercising the right of abandonment given him under section 28, subsection 22, tariff act of 1909, escape the payment of additional duties which, by reason of undervaluations, have accrued under the provisions of section 28, subsection 7, of the same act; nor can he by abandonment be relieved from the payment of regular duties upon the appraised value of the goods when such appraised value is an advance of more than 75 per cent over the entered value, which latter is thus made presumptively fraudulent by the terms of section 28, subsection 7.

United States General Appraisers, New York, December 7, 1911.

In the matter of protest 451786 of Swayne, Hoyt & Co. against the assessment of duty by the collector of customs at the port of San Francisco.

Before Board 3 (WAITE, SOMERVILLE, and HAY, General Appraisers).

WAITE, *General Appraiser:* This case arises over the importation of a consignment of hats from Japan, entered at San Francisco, Cal. The date on the entry indicates that they were entered on May 3, 1910.

The report of the collector states that they were entered for warehouse on May 4, 1910. On the 9th day of May they were appraised at about 125 per cent above the entered value. On May 13, 1910, the importers filed a notice of abandonment in the following language:

We herewith desire to abandon to the Government one case of hats imported by us in the *Chiyo Maru*, from Kobe, April 23, 1910, and entered by us under invoice 5557, bond 3566, marked ✡T✡ No. 1.

The goods were seized by the collector for undervaluation on May 24, 1910.

The claim of the importers is stated in their protest as follows:

We protest against the assessment of duty as made by you on the ground that within 10 days after the date of entry, namely, on the 13th day of May, 1910, we filed in your office a notice of abandonment as provided for in subsection 22 of section 28, act of August 5, 1909.

It will be seen from the above that the importers, by reason of the abandonment (which we understand covers the whole shipment of goods), claim to be relieved from the payment of any duty. The question then for us to decide is as to whether, under the circumstances of this case, the importers had a right to abandon the goods to the Government and avoid the payment of duties.

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Subsection 22 of section 28 of the law of 1909, among other things, grants to importers the right to abandon certain portions of their goods, in the following language:

Nor shall any allowance be made for damage, but the importers may within ten days after entry abandon to the United States all or any portion of goods, wares, or merchandise of every description included in any invoice and be relieved from the payment of duties on the portion so abandoned: *Provided*, That the portion so abandoned shall amount to ten per centum or more of the total value or quantity of the invoice. The right of abandonment herein provided for may be exercised whether the goods, wares, or merchandise have been damaged or not, or whether or not the same have any commercial value.

Subsection 7 of section 28 of the same act provides for the levy and collection of additional duty in case of undervaluation. The language, so far as pertinent, is as follows:

* * * And if the appraised value of any article of imported merchandise subject to an ad valorem duty or to a duty based upon or regulated in any manner by the value thereof shall exceed the value declared in the entry, there shall be levied, collected, and paid, in addition to the duties imposed by law on such merchandise, an additional duty of one per centum of the total appraised value thereof for each one per centum that such appraised value exceeds the value declared in the entry: *Provided*, That the additional duties shall only apply to the particular article or articles in each invoice that are so undervalued, and shall not be imposed upon any article upon which the amount of duty imposed by law on account of the appraised value does not exceed the amount of duty that would be imposed if the appraised value did not exceed the entered value, and shall be limited to seventy-five per centum of the appraised value of such article or articles. Such additional duties shall not be construed to be penal, and shall not be remitted nor payment thereof in any way avoided except in cases arising from a manifest clerical error, nor shall they be refunded in case of exportation of the merchandise, or on any other account, nor shall they be subject to the benefit of drawback: *Provided*, That if the appraised value of any merchandise shall exceed the value declared in the entry by more than seventy-five per centum, except when arising from a manifest clerical error, such entry shall be held to be presumptively fraudulent, and the collector of customs shall seize such merchandise and proceed as in case of forfeiture for violation of the customs laws. * * *

The amount of additional duty is limited to an addition of 1 per cent for every 1 per cent of raise up to 75 per cent of the appraised value. This amount apparently was exacted by the collector and constitutes the additional duty in this case. It will be observed that it is expressly provided in subsection 7 that such additional duty shall not be remitted nor payment thereof in any way avoided except in cases arising from manifest clerical error, and no claim is made herein upon that ground. And it is further provided that such additional duties shall not be refunded in case of exportation of the merchandise nor on any other account. It would seem, therefore, so far as the additional duty is concerned, that the importers have no escape from the payment thereof.

What can be said, however, with reference to the original duty which is due upon the appraised value of the goods? It is suggested

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that the right of abandonment was not intended to apply where there is found to be an undervaluation of the goods, and that the privilege of abandonment can be taken advantage of only where the entered value is equal to the appraised value on the theory that the importers' entry was founded in a wrong or a fraud upon the Government by means of the undervaluation.

This, however, we do not consider a fair interpretation of the law. It is recognized that undervaluations may occur and still the importer be free from any fraud or intended fraud upon the Government. We think this was recognized by Congress when it was provided, by implication at least, that no fraud should be presumed unless there was an undervaluation equivalent to 75 per cent of the entered value. Was it intended, then, that the right of abandonment should be dependent upon the action taken by the local appraiser? We think not, unless the importer, as he has done in this case, chooses to let the question rest upon the first appraisal, which shows *prima facie* fraud. Had an appeal been taken to the board and a final adjudication on the value been had, and such finding not shown the fraud contemplated by the statute, we think the payment of duty on the appraised value of the goods might have been avoided; but in this case the appraisal, which has been acquiesced in, was an advance of more than 75 per cent over the entered value and makes the entry fraudulent. This, we think, deprives the importer of his right of abandonment and makes him liable for the whole duty assessed. It would be manifestly against good morals and public policy to allow an importer willfully to undervalue his goods, and when found out to abandon the property and avoid the payment of duty.

It must be borne in mind that this right to abandon is not coupled with nor dependent upon an allowance for damage to the goods. The language of the statute is "nor shall any allowance be made for damage," but the importer may abandon any portion of the goods in excess of 10 per cent, and that right exists whether the merchandise has been damaged or not and whether it has any commercial value. We think it was intended to give this right to the importer dependent upon no conditions except such as are mentioned in the statute and to be determined entirely with reference to his estimation of landed value or condition of the goods and his subsequent ability to handle them with profit; and that right being given to him independently of the value which might be fixed by the appraisement should, in the absence of fraud, be secured to him with the right to avoid the payment of the duty, as provided in subsection 22 of section 28. In this case the valuation on entry being declared fraudulent by statute, the right to abandon and avoid any part of the duty is denied. The protest is overruled.

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(T. D. 32073.)

Abstracts of decisions of the Board of General Appraisers.

Board 1.—Sharretts, McClelland, and Chamberlain. *Board 2.*—Fischer, Howell, and Cooper. *Board 3.*—Waite, Somerville, and Hay.

Decisions on Applications for Rehearings.

No. 27246.—Rehearing Granted—Cylindrical Metal Containers.—Application by the protestants for rehearing on protest 451492 (New York), of Hensel, Bruckmann & Lorbacher, decided September 19, 1911, Abstract 26650 (T. D. 31883). No. 372. Before Board 2, November 6, 1911.

Application granted. Thin sheet-metal drums in wooden over casks imported as the containers of carbolic-acid crystals and classified as cylindrical vessels under paragraph 151, tariff act of 1909, are claimed to be free of duty as the usual containers of free merchandise.

No. 27247.—Rehearing Denied.—Application by the protestants for rehearing on protests 440776, etc. (New York), of Dubied Machinery Co. et al., decided September 21, 1911, Abstract 26676 (T. D. 31883). No. 373. Before Board 2, November 6, 1911.

Application denied.

No. 27248.—Rehearing Granted—Coverings of Specific-Duty and Free Goods.—Application by the protestants for rehearing on protests 401036, etc. (Philadelphia), of George Allen et al., decided August 12, 1911, Abstract 26335 (T. D. 31813). No. 348. Before Board 3, November 10, 1911.

Application granted as to some of the protests. Paper, cardboard, and pasteboard wrappings or containers of merchandise subject to specific duty or free of duty are claimed to be nondutiable.

No. 27249.—Rehearing Granted—Coverings of Specific-Duty and Free Goods.—Application by the protestants for rehearing on protests 486093, etc. (Chicago and St. Louis), of Theodore Ascher Co. et al., decided August 12, 1911, Abstract 26335 (T. D. 31813). No. 350. Before Board 3, November 10, 1911.

Application granted as to some of the protests. Paper, cardboard, and pasteboard wrappings or containers of merchandise subject to specific duty or free of duty are claimed to be nondutiable.

No. 27250.—Rehearing Granted—Containers of Liquids or Semiliquids.—Application by the protestants for rehearing on protests 415988, etc. (New York), of Austin, Nichols & Co. et al., decided August 12, 1911, Abstract 26335 (T. D. 31813). No. 351. Before Board 3, November 10, 1911.

Application granted as to some of the protests. It is claimed that the usual containers of liquids or semiliquids are not the kind of coverings provided for in section 19, customs administrative act of 1890, and that they are therefore nondutiable.

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No. 27251.—Rehearing Granted—Cylindrical Metal Containers.—Application by the protestants for rehearing on protests 462364, etc. (New York), of Schieffelin & Co., decided October 27, 1911, Abstract 26979 (T. D. 31971). No. 376. Before Board 2, November 10, 1911.

Application granted. The usual containers of oil, which were classified as cylindrical vessels under paragraph 151, tariff act of 1909, are claimed to be free of duty as the usual containers of free merchandise.

No. 27252.—Rehearing Granted—Coverings of Specific-Duty and Free Goods.—Application by the protestants for rehearing on protests 418151, etc. (New York), of Abraham & Straus et al., decided August 12, 1911, Abstract 26335 (T. D. 31813). No. 347. Before Board 3, November 14, 1911.

Application granted as to some of the protests. Paper, cardboard, and pasteboard wrappings or containers of merchandise subject to specific duty or free of duty are claimed to be nondutiable.

No. 27253.—Rehearing Denied.—Application by the protestants for rehearing on protest 497444-37426 (Chicago) of Butler Bros., decided October 19, 1911, Abstract 26896 (T. D. 31940). No. 375. Before Board 1, November 15, 1911.

Application denied.

No. 27254.—Rehearing Denied.—Application by the protestants for rehearing on protests 432288, etc. (Buffalo), of Larkin Co., decided September 21, 1911, Abstract 26673 (T. D. 31883). No. 379. Before Board 1, November 15, 1911.

Application denied.

No. 27255.—Rehearing Granted—Schappe Silk Yarn.—Application by the protestant for rehearing on protest 505179 (New York) of E. Mommer, decided October 25, 1911, Abstract 26970 (T. D. 31971). No. 380. Before Board 2, November 22, 1911.

Application granted. The importer claims that certain schappe silk yarn was assessed on a basis of an erroneous size.

No. 27256.—Rehearing Granted—Artistic Antiquities—Furniture.—Motion to reconsider application by the protestants for rehearing on protest 500800-37599 (Chicago) of George W. Sheldon & Co., decided September 21, 1911, Abstract 26684 (T. D. 31883). No. 370. Before Board 3, November 23, 1911.

Motion granted and order of October 17, 1911 (Abstract 27073; T. D. 31987), set aside. Certain articles of furniture are claimed to be free of duty under paragraph 717, tariff act of 1909, as artistic antiquities more than 100 years old.

No. 27257.—Rehearing Granted—Fur Waste.—Application by the protestants for rehearing on protest 482825 (New York) of American Glue Co., decided October 9, 1911, Abstract 26823 (T. D. 31923). No. 377. Before Board 1, November 29, 1911.

Application granted. Small scraps of carroted coney, or rabbit skins with the fur on, which were classified as waste under paragraph 479, tariff act of 1909, are claimed to be free of duty as glue stock (par. 584).

No. 27258.—Rehearing Granted—Weight of Soap Boxes.—Application by the protestants for rehearing on protest 465684 (Philadelphia) of J. J. Buchey & Co., decided October 3, 1911, Abstract 26800 (T. D. 31912). No. 378. Before Board 3, December 1, 1911.

Application granted. The importers claim that celluloid soap boxes were assessed on the basis of an excessive weight.

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No. 27259.—Rehearing Denied.—Application by the protestant for rehearing on protests 448175, etc. (Boston), of Evan Arthur Leigh, decided October 21, 1911, Abstract 26921 (T. D. 31940). No. 382. Before Board 1, December 1, 1911.

Application denied.

No. 27260.—Rehearing Granted—Chip Baskets.—Application by the Government for rehearing on protests 509835, etc. (New York and Chicago), of A. A. Vantine & Co. et al., decided October 19, 1911, Abstract 26902 (T. D. 31940). No. 384. Before Board 1, December 1, 1911.

Application granted. Chip baskets which the board held dutiable as manufactures of chip under paragraph 463, tariff act of 1909, are claimed by the Government to be properly dutiable as baskets of wood (par. 214).

No. 27261.—Rehearing Granted—Imitation Jet Articles.—Application by the protestants for rehearing on protests 394093-30610, etc. (Chicago), of Charles D. Stone & Co., decided October 19, 1911, Abstract 26888 (T. D. 31940). No. 386. Before Board 1, December 1, 1911.

Application granted. Merchandise found by the board to have consisted of imitation jet articles and held dutiable as manufactures of paste or glass under paragraph 109, tariff act of 1909, is claimed to have been properly classified as articles of personal adornment (par. 448).

No. 27262.—Rehearing Granted—Collar Supporters—Coated-Wire Articles.—Application by the protestants for rehearing on protests 465373, etc. (New York), of J. W. Schloss & Co., decided November 13, 1911, G. A. 7298 (T. D. 32005). No. 388. Before Board 2, December 1, 1911.

Application granted. Collar supporters made of steel wire covered with and in chief value of silk, classified as manufactures of silk under paragraph 403, tariff act of 1909, are claimed to be dutiable as coated wire articles (par. 135).

Before Board 1, December 4, 1911.

No. 27263.—Toy Moving-Picture Films.—Protest 517673 of George Borgfeldt & Co. (Boston). Opinion by Sharretts, G. A.

Protest sustained as to toy moving-picture films. Abstract 26498 (T. D. 31851) followed.

No. 27264.—Cinematograph Films.—Protests 350129, etc., of R. F. Downing & Co. (New York). Opinion by Sharretts, G. A.

Protests sustained as to cinematograph films. United States *v.* Sussfeld (1 Ct. Cust. Appls., 51; T. D. 31030) followed.

No. 27265.—Toy Watches.—Protest 400568 of George Borgfeldt & Co. (Baltimore), and protests 405360, etc., of George Borgfeldt & Co. (Detroit). Opinions by Sharretts, G. A.

Protests sustained as to toy watches on the authority of G. A. 7011 (T. D. 30545).

No. 27266.—Imitation Jet—Cut-Paste Articles.—Protest 394651-30600 of Charles D. Stone & Co. (Chicago), and protests 179313, etc., of A. Bader & Co., protests 248554, etc., of P. H. Petry et al., and protests 436436, etc., of Syndicate Trading Co. (New York). Opinions by Sharretts, G. A.

Protests sustained as to imitation jet and cut-paste articles. United States *v.* Beierle (1 Ct. Cust. Appls., 457; T. D. 31506) and G. A. 6995 (T. D. 30444) followed.

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No. 27267.—Cigar Lighters—Cigarette Cases—Smokers' Articles.—Protests 436705, etc., of American Express Co., protest 522967 of Henry Bischoff & Co., and protest 442134 of Max Spiegel (New York). Opinions by Sharretts, G. A.

Pocket cigar lighters and cigarette cases classified as articles of personal adornment under paragraph 448, tariff act of 1909, were held dutiable as smokers' articles (par. 475), as claimed by the importers. G. A. 7102 (T. D. 30942) followed.

No. 27268.—Glass Disks for Goggles.—Protest 520286 of Jacob Friedenberg (New York). Opinion by Sharretts, G. A.

Protests sustained as to glass disks for goggles on the authority of United States *v.* American Thermo-Ware Co. (T. D. 31571.)

No. 27269.—Spangled Hand Bags—Articles of Personal Adornment.—Protest 514512 of Ignaz Strauss & Co. (New York). Opinion by Sharretts, G. A.

Silk hand bags ornamented with spangles and classified as articles of personal adornment under paragraph 448, tariff act of 1909, were held dutiable as spangled articles (par. 421). Protest sustained. G. A. 7129 (T. D. 31089) followed.

No. 27270.—Mourning Buckles—Imitation Gun-Metal Buckles.—Protest 502350 of Guthman, Solomons & Co. (New York).

Sharretts, *General Appraiser:* The merchandise in question consists of certain plain buckles made of iron or steel, lacquered, used in making women's belts. It was assessed with duty at the compound rates equivalent to 85 per cent ad valorem under paragraph 448 of the act of 1909, as gun-metal buckles. It is claimed to be dutiable at 45 per cent ad valorem under paragraph 199 of said act

The evidence shows that the items in question are perfectly plain buckles made of steel or iron. They are called black or mourning buckles, and are used in connection with black elastic belting to make women's belts. They are never used with white or colored belting. They are not gun metal in fact, nor are they commercially known as gun metal nor as jewelry. They are articles of utility, neither attractive by way of ornamentation nor designed for purposes of personal adornment.

In G. A. 7102 (T. D. 30942) this board held that the scope of paragraph 448 is limited to the inclusion of such articles as are designed and intended for use on or about the person for purposes of adornment and partaking of the nature of jewelry, and that the paragraph is not to be so construed as to include every article made of the specified metals that is carried on the person.

The buckles in question are not designed and intended for use on or about the person for purposes of adornment, nor do they partake of the nature of jewelry. They would not seem to be articles intended for personal adornment to any greater degree than the ordinary brass buckles used on leather belts for men's wear. They are not composed wholly or in chief value of silver, German silver, white metal, brass or gun metal, nor are they set with imitation precious stones. We therefore find that the merchandise designated on the invoice as items 71399, 71400, and 71401 is not gun metal in fact, or commercially known as such, not commonly known as jewelry and not ornamental.

The protest is sustained as to the items indicated and the decision of the collector reversed.

No. 27271.—Bone Jewelry—Glue Jewelry.—Protests 485608, etc., of Soy Kee & Co. (New York). Opinion by Sharretts, G. A.

The protests related to brooches made of brass and pressed glue, pressed glue chief value and watch charms and hatpins made of bone, all classified as jewelry under

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paragraph 448, tariff act of 1909. On the authority of G. A. 7019 (T. D. 30612) and G. A. 7281 (T. D. 31907) the brooches were held dutiable as manufactures in part of metal (par. 199) and the other articles as manufactures of bone (par. 463). Protests sustained.

No. 27272.—Articles of Personal Adornment—Articles of Utility.—Protest 449401 of American Express Co., protest 477606 of E. H. Fielding & Co., and protest 408222 of A. Steinhardt & Bro. (New York). Opinions by Sharretts, G. A.

Protests sustained as to book markers, glove hooks, a reading glass, gun-metal mesh bags, and other articles of utility. G. A. 7129 (T. D. 31089) followed.

No. 27273.—Imitation Pearls—Beads—Imitation Precious Stones—Parts of Jewelry.—Protests 436542, etc., of Albert Lorsch & Co. et al. (New York).

Sharretts, *General Appraiser:* The merchandise in question * * * consists of imitation pearls, the outside being made of glass or paste and the inside of fine fish scale and wax.

The imitation pearls involved may be subdivided into four groups or classes:

1. Those in the form of drilled pearls pierced through; i. e., having two holes.
2. Those not drilled entirely through; i. e., having but one hole.
3. Those attached to short lengths of base-metal wire.
4. Those in the form of drilled pearls pierced through; i. e., having two holes and a flattened side.

Duty was assessed on the first, second, and fourth classes at the rate of 35 per cent ad valorem under paragraph 421 of the tariff act of 1909, as imitation pearl beads, and on the third class at the rate of 60 per cent ad valorem under the last part of paragraph 448 of said act as parts of jewelry. The importers claim all four of the classes to be dutiable at 20 per cent ad valorem under paragraph 449 of said act as imitation precious stones, including pearls or parts thereof, for use in the manufacture of jewelry.

One witness appeared at the hearing in behalf of the importers, who produced samples of the first three classes above mentioned, and who testified that they were exactly the same in every respect as the three classes of imitation pearls which were the subject of this board's decision known as G. A. 7155 (T. D. 31234). Upon motion of counsel for the importers the record and evidence in that case was made a part of the record in these cases. Protest 475584, covering the fourth class above mentioned, was consolidated with the record in the other cases and samples introduced in evidence by a representative of the importing firm. Counsel for the importers conceded on the record that the imitation pearls embraced in the said fourth class above referred to are commercially known as imitation pearl beads, and that they are chiefly used for purposes other than the manufacture of jewelry, chiefly in the manufacture of trimmings. On this concession being made by counsel for the importers' counsel for the Government rested and the cases submitted on the record.

The record as thus made up presents no reason for departing from our former decision, G. A. 7155 (T. D. 31234), as to classes 1, 2, and 3. As to class 4, the importer, having conceded the imitation pearls to be commercially known as pearl beads and to be chiefly used for purposes other than jewelry, we adhere to our ruling as announced in G. A. 7079 (T. D. 30827).

On the authority of G. A. 7155 (T. D. 31234) we sustain the claim in these protests that the merchandise designated in classes 1, 2, and 3 is dutiable at 20 per cent ad valorem, and the collector's decision in each case is reversed. As to the merchandise designated as class 4, following G. A. 7079 (T. D. 30827), we overrule the protest and affirm the decision of the collector.

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No. 27274.—Toy Jewelry.—Protests 392082, etc., of B. Illfelder & Co. (New York). Opinion by Sharretts, G. A.

Protests sustained as to toy jewelry on the authority of G. A. 7251 (T. D. 31786).

No. 27275.—Shell Cameos.—Protest 386749 of Benedict & Warrner (New York). Opinion by Sharretts, G. A.

Protests sustained as to shell cameos. G. A. 6936 (T. D. 30068) followed.

No. 27276.—Glass Button Tops—Parts of Buttons.—Protests 321350, etc., of Veit, Son & Co. (New York).

Sharretts, *General Appraiser:* This protest involves the classification of certain merchandise imported under the act of 1897. Duty was assessed thereon by the collector at the rate of 45 per cent ad valorem under the provisions of paragraph 112 for manufactures of paste, as to some of the cases, and at 60 per cent ad valorem under paragraph 100 as to the others. The only claim made by the importers is that all of said merchandise is dutiable as parts of glass buttons at three-fourths of 1 cent per line and 15 per cent ad valorem under paragraph 414.

The term "parts of buttons" does not include all materials used in the fabrication of buttons. Such material must have undergone a degree of manufacture sufficient to make it known in the trade as parts of buttons or to have given to the material a form fitting it chiefly for use in the manufacture of buttons. The evidence in behalf of the importers does not justify the board in finding that the merchandise has undergone a degree of manufacture making it known as "parts of buttons," nor that its chief use is as parts of buttons. The testimony of the witness was limited to showing that the particular importation in question was intended for use as tops of buttons by his firm. When asked by the counsel for the United States, "These articles are adapted for use as hatpin tops, are they not?" answered, "They could be used for most anything—for belts, for brooches, for whatever you want to use them for. These were used for buttons." When asked by the general appraiser, "Based upon your experience through all these years of importing and selling this class of merchandise, what has been its most general use so far as you know?" he answered, "I would not like to answer that question offhand. I say the fashion dictates what it is used for."

There is no evidence whatever tending to rebut the appraiser's report that the merchandise is a manufacture of paste in contradistinction to glass. Similar articles when used as tops for hatpins have on sufficient proof in hundreds of cases been held to be paste by this board. The importer having failed to establish his contention, we overrule the protests and the collector's decisions in all the cases remain undisturbed.

No. 27277.—Protests Overruled.—Protests 48342b–15545, etc., of Gage Bros. & Co. et al., and protests 38877b–14048, etc., of E. H. Sargent & Co. et al. (Chicago), and protest 442757 of K. Beetar, protests 28967h, etc., of Ferdinand Bing & Co.'s Successors, protests 251102, etc., of B. Blumenthal & Co., protests 314828, etc., of Eimer & Amend et al., protests 513804, etc., of Fillmann, Lee & Happel et al., protest 409059 of William E. Flory & Co., protests 282616, etc., of Hensel, Bruckmann & Lorbacher, protests 209244, etc., of James G. Johnson & Co. et al., protest 408918 of Morimura Bros., protests 248941, etc., of Leo Popper & Sons, and protests 386471, etc., of Veit, Son & Co. (New York). Opinions by Sharretts, G. A.

Protests overruled for want of merit.

No. 27278.—Unfinished "Talles" and "Zidac."—Protest 444663–34410 of B. Shaudinishky & Co. (Chicago).

Chamberlain, *General Appraiser:* The merchandise in question is described on the invoice as "talles" and "zidac." The testimony is to the effect that in their completed condition the articles are worn by Hebrews while attending religious

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services and that they are never worn at any other time. We further adduce from the testimony that in the condition as imported the articles are never worn for the purpose indicated. Duty was assessed at 44 cents per pound and 60 per cent ad valorem under paragraph 382 of the tariff act of 1909 as wool wearing apparel, and it is claimed to be dutiable under paragraph 378 of said act at 44 cents per pound and 55 per cent ad valorem as manufactures of wool.

We find from an examination of the record that the merchandise is not wearing apparel, but a manufacture of wool, and hold it dutiable as claimed. Note Arnold *v.* United States (147 U. S., 494) relative to the construction placed upon the term "wearing apparel."

The protest is sustained and the decision of the collector reversed.

BEFORE BOARD 2, DECEMBER 4, 1911.

No. 27279.—PROTESTS DISMISSED.—Protests 525216, etc., of Rhode Island Lace Works (Providence). Opinion by Fischer, G. A.

Protests dismissed on stipulation.

No. 27280.—PROTESTS ABANDONED.—Protests 529282-3834, etc., of Illinois Central Railroad Co. (New Orleans). Opinion by Fischer, G. A.

Protests abandoned.

No. 27281.—MERCERIZED COTTON CLOTH.—Protests 514248, etc., of C. A. Auffmordt & Co. (New York). Opinion by Cooper, G. A.

The board held certain cotton cloth was improperly subjected to the additional duty provided in paragraph 323, tariff act of 1909, for mercerized cotton cloth.

No. 27282.—COTTON QUILTS IN THE PIECE—UNFINISHED ARTICLES.—Protest 485603 of Sherman & Sons Co. (New York).

COOPER, *General Appraiser:* The merchandise covered by this protest is reported by the appraiser to consist of quilts composed of countable cotton cloth. The collector assessed duty thereon at the rate of 45 per cent ad valorem under paragraph 332, tariff act of 1909, as unfinished articles made from cotton cloth, and it is claimed that the merchandise is dutiable as cotton cloth under paragraphs 315, 316, and 317 of said act.

It appears that all the merchandise assessed at the rate of 45 per cent ad valorem under paragraph 332, except item 11 in case 388, consists of cotton quilts in the piece, each piece containing from 3 to 5 quilts; that nothing has been done to the quilts subsequently to weaving; that the cloth is so woven as to form designs in the shape of quilts; and that all that is necessary to make the completed articles is to cut the bolts between the patterns and hem the ends thus cut. The question for decision, then, is whether this merchandise is "articles made from cotton cloth, whether finished or unfinished," within the meaning of paragraph 332, or "cotton cloth" as defined in paragraph 320.

In Abstract 25741 (T. D. 31654) this board held that cotton scarfs in the piece, the lengths of which were indicated by the dropping of several weft threads, were dutiable as cotton cloth, and not as wearing apparel partly made.

Cotton fabrics so woven that they could be torn apart or cut lengthwise into bandages 2 or 8 inches in width and about 5½ yards in length were held dutiable as cotton cloth rather than as partly made articles of cotton cloth. Abstract 24734 (T. D. 31255). In this case we said:

> No labor has been bestowed upon the cloth after the process of weaving, and it falls within the provision in paragraph 320 for "woven fabrics of cotton."

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The merchandise before the board in G. A. 5527 (T. D. 24880) was cotton napkins in the piece. The fabric was woven with lines both lengthwise and crosswise marking off the individual napkins, but was in the condition as it came from the loom. It was held in that case that the merchandise fell within the description of "cotton table damask" as used in paragraph 321, act of 1897. This decision was approved in G. A. 5801 (T. D. 25631), wherein cotton slipper uppers in the piece were held dutiable as pile fabrics rather than as articles made of pile fabrics.

The provisions of law here involved were construed in G. A. 7166 (T. D. 31295). In that case the goods were woven with a certain pattern making each piece suitable for the manufacture of a bath robe, and they were held dutiable as cotton cloth. While, there was a dissenting opinion in this case, the principle contended for by the dissenting General Appraiser is the one expressed in Abstract 24734 (T. D. 31255), supra, namely, that to bring merchandise within the provision for unfinished articles it must be subjected to some process subsequent to that of weaving.

Following these decisions, we sustain the protest.

No. 27283.—Protests Abandoned.—Protests 511780, etc., of F. L. Kraemer & Co. et al. (New York). Opinion by Cooper, G. A.

Protests abandoned.

Before Board 3, December 4, 1911.

No. 27284.—Pro Forma Invoice.

[Note.—The decisions published in the weekly Treasury Decisions as T. D. 32070—G. A. 7306 and Abstracts 27284 and 27285 have been merged and appear as T. D. 32107—G. A. 7309.]

Before Board 1, December 6, 1911.

No. 27286.—Unpolished Cylinder Glass.—Protests 514708, etc., of American Express Co. (Boston). Opinion by Sharretts, G. A.

Cylinder glass classified under paragraph 100, tariff act of 1909, as polished, was held dutiable as unpolished (par. 99). Protests sustained.

No. 27287.—Sapphire Bearings—Reconstructed-Ruby Bearings.—Protest 472724-35753 of E. Staehli (Chicago). Opinion by Sharretts, G. A.

Jewels for electric meters, composed of sapphires and reconstructed rubies and classified as manufactures of semiprecious stones under paragraph 112, tariff act of 1909, were held dutiable, respectively, as unenumerated manufactures (par. 480) and reconstructed rubies (par. 449). Protest sustained on the authority of G. A. 7209 (T. D. 31519).

No. 27288.—Rosaries.—Protest 522730 of Joseph Jacobs (New York). Opinion by Sharretts, G. A.

Protest sustained as to rosaries. G. A. 7053 (T. D. 30731) followed.

No. 27289.—Imitation Jet—Cut-Paste Articles—Brass Jewelry—Rubber Jewelry.—Protests 463622, etc., of B. Altman & Co. et al., protests 518481, etc., of Betram & Rover, protests 10001h, etc., of Calhoun, Robbins & Co., protests 215291, etc., of J. G. Johnson & Co., protest 488149 of Knauth, Nachod & Kuhne, protest 489064 of Lippmann, Spier & Hahn, and protests 376747, etc., of B. Stearns & Co. (New York). Opinions by Sharretts, G. A.

In so far as the protests related to imitation jet and cut-paste articles they were sustained on the authority of United States *v.* Beierle (1 Ct. Cust. Appls., 457: T. D.

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31506) and G. A. 6995 (T. D. 30444). Brooches and pins made of brass and valued at less than 20 cents per dozen pieces, classified as jewelry under paragraph 448, tariff act of 1909, were held dutiable as manufactures of metal (par. 199). G. A. 7019 (T. D. 30612) followed. A further claim was sustained that brooches and pins of hard rubber, classified as jewelry under paragraph 434, tariff act of 1897, were dutiable as manufactures of hard rubber (par. 450).

No. 27290.—Toy Jewelry—Brass Jewelry.—Protest 446856 of A. J. Hague & Co., and protests 515084, etc., of A. Strauss & Co. (New York). Opinions by Sharretts, G. A.

Protests sustained as to toy jewelry and brass jewelry on the authority of G. A. 7251 (T. D. 31786) and G. A. 7019 (T. D. 30612).

No. 27291.—Lace Pins.—Protest 504178 of Poirier & Lindeman (New York). Opinion by Sharretts, G. A.

Lace pins classified as jewelry under paragraph 448, tariff act of 1909, were held dutiable as manufactures of paste (par. 109) or metal (par. 199). Abstract 26414 (T. D. 31842) followed.

No. 27292.—Cigarette Cases—Coin Holders.—Protest 514306 of C. A. Clark, and protest 520397 of Oppenheimer-Brussel Imp. Co. (New York). Opinions by Sharretts, G. A.

Protests sustained as to cigarette cases and coin holders. G. A. 7102 (T. D. 30942) and G. A. 7129 (T. D. 31089) followed.

No. 27293.—Beaded Silk Bags.—Protest 418422 of Ignaz Strauss & Co. (New York). Opinion by Sharretts, G. A.

Bags classified as spangled articles under paragraph 421, tariff act of 1909, were held dutiable as manufactures in chief value of silk (par. 403), as claimed by the importers.

No. 27294.—Cut Agate, etc.—Precious Stones.—Protest 386580 of B. Altman & Co., and protests 383647, etc., of L. Tannenbaum & Co. et al. (New York). Opinions by Sharretts, G. A.

Protests sustained as to pieces of agate, jasper, cornelian, onyx, and coral, cut but not set and intended for use in the manufacture of jewelry. United States *v.* Lorsch (172 Fed. Rep., 277; T. D. 29837) followed.

No. 27295.—Imitation Precious Stones.—Protest 348986 of Leo Popper & Sons (New York). Opinion by Sharretts, G. A.

Merchandise classified as manufactures of paste under paragraph 112, tariff act of 1897, was held dutiable as imitation precious stones not exceeding one inch in dimensions (par. 435), as claimed by the importers.

No. 27296.—Imitation Precious Stones.—Protests 404595, etc., of American Bead Co. (New York). Opinion by Sharretts, G. A.

Imitations of opals and moonstones, used for jewelry purposes and classified as beads under paragraph 408, tariff act of 1897, and paragraph 421, act of 1909, were held dutiable as imitation precious stones (par. 435, act of 1897, and par. 449, act of 1909). Protests sustained on the authority of Abstract 26470 (T. D. 31851).

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No. 27297.—Protests Overruled.—Protests 415333-32328, etc., of Gallagher & Ascher (Chicago), protest 399541 of American Bead Co., protests 280796, etc., and 425367, etc., of Hensel, Bruckmann & Lorbacher, protests 118988, etc., of Kaufmann, Aron & Warshauer et al., protests 489568, etc., of Lippmann, Spier & Hahn, protests 384211, etc., of H. Nordlinger's Sons et al., protests 107990, etc., of Oelschlager Bros. et al., protests 68792f, etc., and 183909, etc., of P. H. Petry & Co. et al., protests 400400, etc., of L. Popper & Son, protest 342963 of Semon, Bache & Co., and protests 252575, etc., of A. A. Vantine & Co. et al. (New York), protests 338114, etc., of George Borgfeldt & Co. et al. (Philadelphia), and protests 291232, etc., of Charles H. Wyman & Co. (St. Louis). Opinions by Sharretts, G. A.

Protests overruled for want of merit.

No. 27298.—Natural Grasses—Dyed Grasses.—Protest 486626 of A. H. Post & Co. (Philadelphia). Opinion by McClelland, G. A.

Oats and stypa grass, a portion in the natural condition and the remainder dyed, classified either as ornamental grains under paragraph 438, tariff act of 1909, or as manufactures of grass (par. 463), were claimed to be free of duty as "grasses * * * not dressed or manufactured in any manner" (par. 578). Protest sustained as to the portion in the natural condition and overruled as to the dyed portion.

No. 27299.—Willow Baskets.—Protests 438714-33747, etc., of American Shipping Co. et al. (Chicago). Opinion by McClelland, G. A.

Protests sustained as to willow baskets. Brody *v.* United States (T. D. 31573) followed.

No. 27300.—Leather Gloves.—Protest 420852 of Kaufman-Straus Co. (Louisville). Opinion by McClelland, G. A.

Leather gloves were held to have been improperly subjected to the additional duty provided in paragraph 459, tariff act of 1909, for such gloves when embroidered. Abstract 23525 (T. D. 30710) followed.

No. 27301.—Protests Abandoned.—Protest 453273 of Gerber, Nott & Co. (Buffalo). Opinion by McClelland, G. A.

Protest abandoned.

Before Board 2, December 6, 1911.

No. 27302.—Unbound Books in Foreign Language.—Protest 516279-38455 of Cameron & Cameron (Chicago).

Fischer, *General Appraiser:* The merchandise consists of hymn books in sheets printed entirely in German. Duty was assessed on said goods at the rate of 25 per cent ad valorem under the provisions of paragraph 416, tariff act of 1909, as printed matter. It is claimed that the merchandise is entitled to free entry under paragraph 518 of said act as books and pamphlets printed chiefly in languages other than English.

The appraiser reports that the total number of books were packed in 8 cases, but were not arranged in order for binding, and therefore were returned as printed matter. The record in the case could be more definite, but we consider that the exhibits in the case and the method of packing of the folded sheets as indicated by the invoice

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satisfactorily establish that the material to make the hymn books was in sorted or assembled sheets. For all practical purposes the sheets constitute unbound books or pamphlets, and may be considered as falling within the provisions of paragraph 518. The protest is sustained and the decision of the collector reversed.

No. 27303.—Cotton Window Hollands—Unfinished Cotton Articles.—Protest 470014 of B. R. Anderson & Co. (Port Townsend).

Cooper, *General Appraiser:* This protest was submitted upon the following stipulation:

It is stipulated that the article itself is fabric known as cotton Hollands, colored plain green, in various lengths, cut in lengths ready for windows, about 6 feet, and one end having a hem suitable to contain a stick to be inserted.

These articles were classified as manufactures of cotton under paragraph 332, tariff act of 1909, at the rate of 45 per cent ad valorem, and are claimed to be dutiable as "cotton window Hollands" under paragraph 321 of said act at 3 cents per square yard and 20 per cent ad valorem.

It being agreed that these articles are known as cotton Hollands used for windows, the provision in paragraph 321 governs. It is immaterial whether they are so known commonly or commercially.

The fact that they are hemmed is also immaterial, because the provision in paragraph 332 for "articles made from cotton cloth, whether finished or unfinished," can not be applied to these articles by reason of the definition of the term "cotton cloth" in paragraph 320, which does not include the filled cloths provided for in paragraph 321. Nor are the articles dutiable as manufactures of cotton. While they have been advanced in manufacture by the process of hemming, they are incomplete and have not become shades. They are more specifically described as "cotton window Hollands." Fenton *v.* United States (1 Ct. Cust. Appls., 529; T. D. 31546).

The protest is sustained.

No. 27304.—Cotton and Flax Fabrics.—Protest 481871 of J. H. Eilbeck (New York). Opinion by Cooper, G. A.

Slip covers for furniture, classified as flax fabrics under paragraph 357, tariff act of 1909, were held dutiable as manufactures in chief value of cotton (par. 332), as claimed by the importer.

No. 27305.—Raincoats.—Protests 458319, etc., of J. Wener & Co. et al. (New York). Opinion by Cooper, G. A.

Raincoats classified as cotton wearing apparel under paragraph 324, tariff act of 1909, were held dutiable as manufactures of rubber (par. 463). Protests sustained.

No. 27306.—Drawnwork.—Protests 191535, etc., of A. Merhige (New York). Opinion by Cooper, G. A.

Protests sustained as to drawnwork articles on the authority of G. A. 6993 (T. D. 30442).

No. 27307.—Protests Overruled.—Protests 507945–37609, etc., of T. Buettner & Co. (Chicago), protests 482177, etc., of E. de Grandmont (New York), protest 287710 of John Dunn, jr., and protests 506360, etc., of Young, Smyth, Field Co. et al. (Philadelphia), and protests 308156, etc., of Tai Chong & Co. (San Francisco). Opinions by Cooper, G. A.

Protests overruled for want of merit.

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BEFORE BOARD 3, DECEMBER 6, 1911.

No. 27308.—CANDIED FRUITS—SWEETMEATS.—Protest 503276 of Sue Wo & Co. (San Francisco). Opinion by Waite, G. A.

Merchandise classified as preserved citron under paragraph 278, tariff act of 1909, was found to consist of Chinese fruits, candied or preserved, and held dutiable as sweetmeats or comfits (par. 274). Protest sustained.

No. 27309.—PROTESTS OVERRULED.—Protest 509946 of Perkins, Goodwin Co. (Boston), and protest 486618 of A. H. Post & Co. (Philadelphia). Opinions by Somerville, G. A.

Protests overruled for want of merit.

No. 27310.—RECIPROCITY—REIMPORTATION—WAREHOUSE GOODS.—Protest 517396 of P. Pastene & Co. (Boston).

HAY, *General Appraiser:* Certain bitters, the product of Italy, imported from Montreal, Canada, to the United States, were entered for warehouse at Boston on December 31, 1909. On January 13, 1910, they were withdrawn and were exported to Italy, consigned to the importers' branch house in Naples. On February 24, 1910, they were entered for consumption at the port of Boston and duty was assessed at $1.75 per proof gallon. The entry was reliquidated by the collector on February 21, 1911, and duty was assessed at $2.60 per gallon. Against this reliquidation the importers protest, claiming the benefit of the reduced duty provided for by the treaty between the United States and Italy.

The facts of the case as told by the importers are that the liquor in question was shipped from Italy to Montreal with the purpose of there being offered for sale, but it was never taken out of bond in Canada, for the reason that the merchant was unable to find a market for it. The importer further testified that, upon shipping the goods to Boston and endeavoring to enter them as the product of Italy, the collector, refusing to treat them as such, told him he could only get them in in that way by shipping them back to Italy and having them returned to the United States. Whether this advice was actually given him by the collector or not, it is not a true expression of the law. Such an exportation and reimportation could not be treated as bona fide. See American Mica Co.'s case, G. A. 7139 (T. D. 31143). The protest is overruled.

No. 27311.—PROTESTS OVERRULED.—Protests 459285, etc., of Pittsburgh Press Co. (Pittsburgh). Opinion by Hay, G. A.

Protests overruled for want of merit.

No. 27312.—PROTESTS ABANDONED.—Protests 287434, etc., of Rando Bros. et al. (New York), and protests 514649, etc., of Duncan & Moorhead et al. (Philadelphia).

Protests abandoned.

BEFORE BOARD 1, DECEMBER 7, 1911.

No. 27313.—IMITATION JET.—Protests 459143, etc., of Veit, Son & Co. et. al. (New York). Opinion by Sharretts, G. A.

Protests sustained as to imitation jet articles on the authority of United States v. Beierle (1 Ct. Cust. Appls., 457; T. D. 31506).

No. 27314.—PROTESTS OVERRULED.—Protests 221947-23309, etc., of International Forwarding Co. et. al. (Chicago), and protests 402373, etc., of E. P. Stahel & Co. et al. (New York). Opinions by Sharretts, G. A.

Protests overruled for want of merit.

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No. 27315.—Split Leather.—Protest 485194 of Langfeld Bros. & Co. (Philadelphia). Opinion by McClelland, G. A.

Merchandise classified as leather not specially provided for under paragraph 451, tariff act of 1909, was held dutiable as split leather (par. 450), as claimed by the importers, the appraiser having admitted error.

No. 27316.—Steamed Bones.—Protests 478850, etc., of F. H. Shallus (Baltimore). Opinion by McClelland, G. A.

Protests sustained as to steamed bones. G. A. 7154 (T. D. 31233) followed.

No. 27317.—Apron Leather.—Protests 411275, etc., of H. F. Livermore Co. (Boston). Opinion by McClelland, G. A.

Protests sustained as to apron leather on the authority of United States *v.* Richards (1 Ct. Cust. Appls., 537; T. D. 31548).

No. 27318.—Violet Pastilles—Confectionery.—Protest 522384 of R. F. Downing & Co. (New York). Opinion by McClelland, G. A.

Protest sustained as to violet pastilles. Abstract 22525 (T. D. 30234) followed.

No. 27319.—Woltat—Medicinal Preparation.—Protest 521288 of F. Korndorfer (New York). Opinion by McClelland, G. A.

Protest sustained as to woltat. Abstract 26104 (T. D. 31757) followed.

No. 27320.—Protests Overruled.—Protests 434415, etc., of F. L. Roberts & Co. et al. (Boston), protest 488941-36545 of Sears, Roebuck & Co. (Chicago), protests 477001, etc., of H. Bayersdorfer & Co. (Philadelphia), and protests 516339, etc., of Morimura Bros. (Port Townsend). Opinions by McClelland, G. A.

Protests overruled for want of merit.

No. 27321.—Tetrachloride of Tin—Lac Spirits.—Protests 406222, etc., of Consolidated Color & Chemical Co. et al. (New York). Opinion by Chamberlain, G. A.

Protests sustained as to tetrachloride of tin. Consolidated Color & Chemical Co. *v.* United States (T. D. 31944) followed.

Before Board 2, December 7, 1911.

No. 27322.—Tapelike Belting.—Protests 437361, etc., of Edwin Horrax (New York). Opinion by Fischer, G. A.

Protests sustained as to tapelike belting for cigarette-making machines. United States *v.* Horrax (1 Ct. Cust. Appls., 142; T. D. 31187) followed.

No. 27323.—Decalcomanias.—Protests 351058, etc., of Henry Bischoff & Co. (New York). Opinion by Fischer, G. A.

Protests sustained as to decalcomanias on the authority of United States *v.* Borgfeldt (T. D. 31945).

No. 27324.—Gelatin-Coated Post Cards—Lithographic Prints.—Protest 508129 of F. L. Pitt Publishing Co. (Pittsburgh). Opinion by Fischer, G. A.

Lithographically printed souvenir post cards with a surface coating of gelatin, which were classified as manufactures of gelatin under paragraph 23, tariff act of 1909, were found to be composed in chief value of paper and held dutiable as lithographic prints (par. 412), as claimed by the importers.

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No. 27325.—PROTESTS OVERRULED.—Protests 517277, etc., of F. M. Jabara & Bro. et al. (New York). Opinion by Howell, G. A.

Protests overruled for want of merit.

No. 27326.—COTTON TABLE DAMASK ARTICLES.—Protest 95978f of R. W. Moore (New York). Opinion by Cooper, G. A.

Cotton table damask articles classified as manufactures of cotton under paragraph 322, tariff act of 1897, were held dutiable as cotton table damask (par. 321). Protest sustained on the authority of Dunham *v.* United States (150 Fed. Rep., 562; T. D. 27805).

No. 27327.—JUTE FABRICS.—Protests 486272, etc., of Johnston, Morehouse & Dickey Co. et al. (Pittsburgh). Opinion by Cooper, G. A.

Jute fabrics classified as manufactures of vegetable fiber under paragraph 358, tariff act of 1909, on the theory that they were twilled, were found not to be twilled and held dutiable as plain woven fabrics of single jute yarns (par. 352). Protests sustained in part.

No. 27328.—HEMSTITCHED FLAX ARTICLES.—Protest 425258 of George S. Bush & Co. (Port Townsend). Opinion by Cooper, G. A.

Protests sustained as to hemstitched flax articles. Abstract 26740 (T. D. 31899) followed.

No. 27329.—EMBROIDERED FANS.—Protests 195759, etc., of Quong Yee Wo et al., and protest 511529 of Soy Kee & Co. (New York), and protests 288122, etc., of Jung John et al. (Philadelphia). Opinions by Cooper, G. A.

Protests sustained as to embroidered fans on the authority of United States *v.* Harper (T. D. 31655).

No. 27330.—COTTON CLOTH.—Protests 252607-24552, etc., of Marshall Field & Co. et al. (Chicago.) Opinion by Cooper, G. A.

Cotton cloth classified as colored was held dutiable as bleached or unbleached. Protests sustained. G. A. 6956 (T. D. 30206) followed.

No. 27331.—FIGURED COTTON CLOTH—RUSSIAN CORDS.—Protests 457007, etc., and 510824, etc., of Kaskel & Kaskel et al., and protests 484764, etc., of E. McConnell & Co. et al. (New York). Opinions by Cooper, G. A.

Protests sustained as to cotton cloth ornamented with Russian cords. United States *v.* McConnell (1 Ct. Cust. Appls., 73; T. D. 31104) followed.

No. 27332.—FLAX FABRICS.—Protest 493374 of L. Hess & Co. (New York). Opinion by Cooper, G. A.

Flax fabrics classified as weighing more than 4½ ounces per square yard under paragraph 357, tariff act of 1909, were held dutiable as weighing less than 4½ ounces per square yard under the same paragraph. Protest sustained.

No. 27333.—MERCERIZED COTTON CLOTH.—Protests 486756, etc., of S. H. Kahn & Co. et al. and protests 492035, etc., of Rusch & Co. et al. (New York). Opinions by Cooper, G. A.

The board held cotton cloth to have been improperly subjected to the additional duty provided in paragraph 323, tariff act of 1909, for mercerized cotton cloth.

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No. 27334.—Scalloped Articles—Drawnwork.—Protests 370821, etc., of Abraham & Straus et al., protests 29070h, etc., of M. H. Frank & Co. et al., protest 349972 of Kuyper & Shields, protests 302592, etc., of Meyer, Martin & Co. et al., protest 380318 of Neuss, Hesslein & Co., and protests 396348, etc., of Ryan & McGahan (New York). Opinions by Cooper, G. A.

Protests sustained as to scalloped articles and drawnwork. G. A. 6966 (T. D. 30271) and G. A. 6993 (T. D. 30442) followed.

No. 27335.—Protests Overruled.—Protest 532442 of United Hosiery Co. (Boston), protests 492904–36987, etc., of Carson, Pirie, Scott & Co. (Chicago), protest 476090 of M. D. Howell & Co., protest 496616 of Rusch & Co., protests 499734, etc., of B. Ulmann & Co., and protest 506633 of Victorius Bros. (New York), protest 318699 of George S. Bush & Co. (Port Townsend), and protests 481270, etc., of C. H. Wyman & Co. (St. Louis). Opinions by Cooper, G. A.

Protests overruled for want of merit.

Before Board 3, December 7, 1911.

No. 27336.—Frankfurter Sausage in Tins—Bologna—Prepared Meats.—Protest 208829 of Vittucci & Magnano (Port Townsend).

Waite, *General Appraiser:* This importation consists of merchandise invoiced as "frankfurter sausage." It is put up in hermetically sealed tin cans about 3 inches in diameter and 6 inches long. Duty has been assessed upon the merchandise under paragraph 275, tariff act of 1897, providing for "meats of all kinds, prepared or preserved." It is claimed to be free of duty under paragraph 655 as bologna sausage. No evidence has been introduced in the case except a sample. The board has heretofore held that certain frankfurter sausages were bologna and free of duty under the specific provision therefor in the free list. Abstract 5149 (T. D. 26117). It was not, however, intended to hold that sausages which might be invoiced as frankfurter sausages should be free of duty as bologna. There must be some proof that they are bologna upon which to base such a finding. The manner in which this sausage is put up is an additional preparation to that given to the ordinary spiced and chopped meat. In the absence of proof that these are known as bologna, or conform to the definition of bologna heretofore observed by the courts, we overrule the protest and affirm the finding of the collector.

No. 27337.—Protests Overruled.—Protest 427345 of E. V. Wilbern (Cincinnati). Opinion by Hay, G. A.

Protest overruled for want of merit.

No. 27338.—Protests Abandoned.—Protests 477821, etc., of Ernest L. Rhodes & Co. (Atlanta), protests 519451-3788, etc., of Oberle & Henry et al. (New Orleans), and protests 232120, etc., of Acker, Merrall & Condit Co. et al. (New York).

Protests abandoned.

Before Board 1, December 9, 1911.

No. 27339.—Rosaries.—Protest 454518 of S. Handel & Bro. (New York). Opinion by Sharretts, G. A.

Protest sustained as to rosaries on the authority of United States *v.* Benziger (178 Fed. Rep., 1006; T. D. 30386).

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No. 27340.—Protests Overruled.—Protests 341763, etc., of George Borgfeldt & Co. et al. (Philadelphia), protests 243625, etc., of Ralph Pierson & Co. et al. (St. Louis), and protests 523783, etc., of Chee Chong & Co. et al. (San Francisco). Opinions by Sharretts, G. A.

Protests overruled for want of merit.

No. 27341.—Olive Oil in Tins.—Protests 279580, etc., of Marchesini Bros. et al. (New York). Opinion by McClelland, G. A.

Protests sustained as to olive oil in 5-gallon tins imported under the act of 1897. United States *v.* La Manna (158 Fed. Rep., 1022; T. D. 28865) followed.

No. 27342.—Fur Skins, Dressed—Beaver Strips—Fur Hats.—Protests 402763, etc., of Frederick Erler et al. (New York). Opinion by McClelland, G. A.

Protests sustained as to furs dressed on the skin, beaver strips, and fur hats on the authority of G. A. 7063 (T. D. 30765), G. A. 7109 (T. D. 30990), and Abstract 26106 (T. D. 31757).

No. 27343.—Protests Abandoned.—Protest 524559 of William H. Masson (Baltimore), protest 518085 of D. Baird & Son (Louisville), protests 526154, etc., of F. W. Myers & Co. (Plattsburg), and protest 467761 of M. Rice & Co. (Philadelphia). Opinions by McClelland, G. A.

Protests abandoned.

Before Board 2, December 9, 1911.

No. 27344.—Embroidered Fans.—Protests 289704, etc., of Tsue Lung (Washington). Opinion by Cooper, G. A.

Protests sustained as to embroidered fans. United States *v.* Harper (T. D. 31655) followed.

No. 27345.—Flax Fabrics.—Protests 517359, etc., of James F. White & Co. (New York). Opinion by Cooper, G. A.

Fabrics classified as cotton cloth under paragraph 316, tariff act of 1909, were held dutiable as flax fabrics (par. 357), as claimed by the importers.

No. 27346.—Brattice Cloth.—Protests 475360, etc., of Kern Commercial Co. et al. (New York). Opinion by Cooper, G. A.

Protests sustained as to plain woven brattice cloth on the authority of G. A. 7104 (T. D. 30967).

No. 27347.—Mercerized Cotton Cloth.—Protests 517012, etc., of H. Bischoff & Co. et al., and protest 478956 of E. de Grandmont (New York). Opinions by Cooper, G. A.

Cotton cloth was held to have been improperly subjected to the additional duty provided in paragraph 323, tariff act of 1909, for such cloth when mercerized.

No. 27348.—Drawnwork.—Protests 127415, etc., of H. E. Frankenberg Co. (New York). Opinion by Cooper, G. A.

Protests sustained as to drawnwork articles on the authority of G. A. 6993 (T. D 30442.

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No. 27349.—Straw Ornaments.—Protests 458682, etc., of Veit, Son & Co. (New York). Opinion by Cooper, G. A.

Articles classified as cotton ornaments under paragraph 349, tariff act of 1909, were found to be composed in chief value of straw and held dutiable as manufactures of straw (par. 463), as claimed by the importers.

No. 27350.—Colored Cotton Cloth.—Protest 259652 of E. C. Carter (New York). Opinion by Cooper, G. A.

Protest sustained as to cotton cloth with an unbleached foundation and colored extra threads. G. A. 6956 (T. D. 30206) followed.

No. 27351.—Protests Overruled.—Protest 493026 of American Express Co. (Boston), protest 348830 of B. Altman & Co., protests 3121h, etc., of J. R. Simon & Co. et al., and protest 486005 of Surgical Supply Importing Co. (New York), and protest 495135 of W. Schade & Co. (St. Louis). Opinions by Cooper, G. A.

Protests overruled for want of merit.

Before Board 3, December 9, 1911.

No. 27352.—Hyacinth Bulbs.—Protests 489468–37077, etc., of St. Joseph's Home et al. (Chicago). Opinion by Waite, G. A.

Protests sustained as to hyacinth bulbs. Breck *v.* United States (T. D. 31576) followed.

No. 27353.—Protests Overruled.—Protests 510556, etc., of William Litchfield et al. (Boston), protests 447726–34788, etc., of Gallagher & Ascher et al. (Chicago), protests 258155, etc., of C. H. Wyman & Co. et al. (St. Louis), and protests 516681, etc., of Oy Wo Tong Co. et al. (San Francisco). Opinions by Waite, G. A.

Protests overruled for want of merit.

No. 27354.—Coverings of Specific-Duty and Free Goods.—Protest 443310 of R. U. Delapenha & Co. (Minneapolis), protest 422312 of George E. Field (New York), protest 422523 of Kaufman Bros. (Pittsburgh), protests 407658, etc., of B. Nugent & Bro. Dry Goods Co. et al. (St. Louis), and protest 403814 of H. A. Drevis Co. (St. Paul). Opinions by Hay, G. A.

Paper, cardboard, and pasteboard wrappings or containers of merchandise subject to specific duty or free of duty were held nondutiable, as claimed by the importers. United States *v.* Matagrin (1 Ct. Cust. Appls., 309; T. D. 31406) followed.

No. 27355.—Protests Overruled.—Protests 524587–37920, etc., of Carson, Pirie, Scott & Co. et al. (Chicago), protests 416502, etc., of Joseph Lazarus Co. (Cincinnati), protest 419480 of Reed Bros. & Co. (Cleveland), protests 518082, etc., of D. Baird & Son (Louisville), protest 451210 of Ewing & Clancey (New York), and protest 436868 of Lowengart & Co. (Portland, Oreg.). Opinions by Hay, G. A.

Protests overruled for want of merit.

No. 27356.—Protests Abandoned.—Protests 447837, etc., of H. J. Casson (Buffalo), protest 508030 of A. T. Lewis & Son Dry Goods Co. (Denver), and protests 481257, etc., of B. Nugent & Bro. Dry Goods Co. et al. (St. Louis).

Protests abandoned.

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(T. D. 32074.)

Nonimportation—Lemons.

UNITED STATES *v.* SHALLUS (No. 223.)

1. WHEN DUTY ATTACHES.

Duty attaches upon imported merchandise at the time the vessel, with the cargo aboard, arrives within the line of the customs district.

2. WHAT IS A NONIMPORTATION.

A cargo, or part thereof, so far destroyed as to be of no commercial value at the time the importation is brought within the customs district is not, as to the destroyed portion, deemed an "importation of merchandise" within the tariff laws of the United States, and therefore no duty accrues or can be collected thereon.

3. IMPORTATION DESPITE LOSS IN CARGO.

The destruction or loss of the whole or any part of a cargo of imported merchandise after this enters the line of the customs district and before it is unloaded from the vessel or entered or surrendered from the custody of the customs is not thereby exempted from the payment of duties, unless by reason of express statute or regulation and then as provided in that statute or regulation.

4. DECAY IN CARGO A QUESTION OF EVIDENCE.

The Congress has by remedial statute established a rule of evidence in determining the condition of merchandise at the time this crosses the customs line, and the quantity of the merchandise existing at the precise moment of importation, if made an issue, becomes a fact to be proved, as any other fact in issue, by evidence.

5. PRESENT FINDING AS TO LEMONS.

An examination of all the evidence in this case is persuasive of the correctness of the board's finding, except as to one entry, and on modification the finding is affirmed.

United States Court of Customs Appeals, November 28, 1911.

TRANSFERRED from United States Circuit Court, District of Maryland, Abstract 20361 (T. D. 29449).

[Decision modified and affirmed.]

Wm. L. Wemple, Assistant Attorney General (*Charles E. McNabb* on the brief), for the United States.

James A. Fechtig, jr., and *T. Spence Creney* for appellee.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

DE VRIES, Judge, delivered the opinion of the court:

The importations were of lemons at the port of Baltimore. The controversy concerns the proper allowance for nonimportation, occasioned by decay and consequent destruction of a part of each of the cargoes at the time of importation.

This question has been the subject of many controversies; and the consideration thereof by customs officials, the Board of General Appraisers, the courts, and the Congress have been voluminous, extending over a long period of time.

Certain legal propositions underlying a solution of the question may be considered fundamental and established beyond controversy.

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First, and chief of these, is the well-settled legal postulate, that duty attaches upon imported merchandise at the time the vessel crosses the line of and within the customs district. This question has been so often mooted and consistently decided, as above stated, that extensive quotation, or other than citation, in its support would seem superfluous. Meredith *v.* United States (13 Pet., 486); United States *v.* Vowell (5 Cranch, 368); Arnold *v.* United States (9 Cranch, 103); Lawder *v.* Stone (187 U. S., 281); Stone *v.* Shallus (143 Fed. Rep., 486); United States *v.* Habicht (1 Ct. Cust. Appls., 53).

It is equally well established, as a fundamental principle of substantive law, that a cargo or part thereof so far destroyed as to become of no commercial value at the time the importation is brought within the customs district is not, as to the destroyed portion, deemed an "importation of merchandise" within the tariff laws of the United States, and therefore no duty accrues thereupon or can be collected therefor. Lawder *v.* Stone (187 U. S., 281); Stone *v.* Shallus (143 Fed. Rep., 486); United States *v.* Habicht (1 Ct. Cust. Appls., 53); Marriott *v.* Brune (9 How., 619).

An equally well-established fundamental principle of substantive law is that destruction or loss of the whole or any part of a cargo of imported merchandise after the same enters the line of the customs district and before the same is unladen from the vessel or entered or surrendered from the customs custody is not thereby, except as perforce of express statute or regulation and as therein provided, exempted from the payment of customs duties. Belcher *v.* Linn (24 How., 508); Meredith *v.* United States (13 Pet., 486); United States *v.* Lyman (26 Fed. Cas., 1024).

In some cases, as where goods are contained in bonded warehouses, such release from duties is expressly forbidden by statute. (Sec. 2983, Rev. Stat.) Such a loss is the proper subject of consideration by the Secretary of the Treasury. Ferry *v.* United States (85 Fed. Rep., 550.)

Assuming these uncontradicted propositions of law to be true, the determination of the amount of rot or decay existing in a cargo of imported lemons or fruit becomes one of evidence. It concerns the establishment of a fact, the exact status of which at the time the vessel crossed the customs line into the jurisdiction of the customs district is, owing to circumstances, impossible of precise and accurate establishment. The Government is authorized and warranted to collect duties upon actual importations. The importer is called upon to pay duties upon actual importations. It is less difficult for the Government in the first instance to ascertain the exact amount of the importation and of consequent duties at the precise moment that the goods cross the customs line, in exact justice to the importing citizen, in the case of decay or rot, than it is for the latter to establish the pre-

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cise amount of the importation at that time, as the former has legal custody of the goods. Both are confronted, in the legal aspect of the case, by a condition of facts and rest under circumstances against which each is relieved perforce of the legal maxim "*Lex non cogit ad impossibilia*" (the law does not seek to compel a man to do that which he can not possibly perform). It is equally within the spirit of this maxim that the law does not require a man in establishing his rights to establish that which is legally impossible for him under the circumstances to do.

While it is true under the ordinary hard and fast principle of substantive law that duties accrue upon imported merchandise at the exact moment they cross the line within the customs district, it is equally true that the whole framework of customs administrative law and regulations are constructed upon the principle that, while duties actually accrue at the time stated, the ascertainment of the amount of duties which have thus and then accrued, and the amount of merchandise which has been imported, its condition, and in every respect its dutiable status, are ascertained as of the time they cross said line by examinations and inspections of their condition at the subsequent time of weighing, gauging, appraising, etc. It would be a physical impossibility to otherwise ascertain their dutiable status.

In recognition of this truth the Congress by statute prescribed certain rules of statutory evidence to be ascertained at the time of examination or other inspection of the goods, and has enacted that the results then ascertained and certified shall become legal evidence of their existence at the time the goods were brought within the customs district. Section 2921 of the Revised Statutes provides, with reference to packages:

> If, on the opening of any package, a deficiency of an article shall be found, on examination by the appraisers, the same shall be certified to the collector on the invoice, and an allowance for the same be made in estimating the duties.

This statute, however, is remedial and not substantive. It establishes a rule of evidence denominating what shall constitute legally sufficient proof of the condition of the merchandise at the time of crossing the customs line and is not an amendment of or exception to the substantive law fixing the time when duties accrue.

While it has been held that this certificate by the appraiser is binding upon the collector, United States *v.* Park (77 Fed. Rep., 608), it is not upon the importer, and the quantity of the merchandise or extent of decay existing at the precise moment of importation, when made an issue, becomes a fact to be proven as any other fact in issue by evidence. Merwin *v.* Magone (70 Fed. Rep., 776).

The burden of proof is upon the importer, protestant in such issues—De Nunzio Lunt Co. *v.* United States (164 Fed. Rep., 909), Merwin *v.* Magone (70 Fed. Rep., 776)—as in others, to establish the allegations

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of his protest. Arthur *v.* Morgan (112 U. S., 495), Herman *v.* Robertson (152 U. S., 521), Preston *v.* Russell (152 U. S., 577).

We think the better reasoning is that he is not estopped from disputing a certificate by the appraiser that the goods were in sound condition or invoice quantities. Note the well-considered opinion and cases cited by Somerville, G. A., in G. A. 5891 (T. D. 25965).

The proof of necessity being related to a time subsequent to actual importation, the trial officer must call to his aid, in the ascertainment of its probably different condition at the previous period, that judicial notice afforded by the "actual course of nature." (1 Greenleaf's Evidence, sec. 3a.)

Remoteness, therefore, ordinarily would seem to go to the weight rather than the materiality of the testimony. The condition of the merchandise, such as fruit, and amount thereof which has withstood the ravages of decay, must of necessity depend upon many and variable conditions and circumstances. Its relative condition at the time of importation measured from any given time thereafter naturally differs in different kinds and classes or grades of the same kind of fruit, its condition when picked, length of voyage, season, and temperature during voyage, its manner of packing and storage, promptness in entry, unloading, examination, and numerous other conditions. These conditions and the witnesses before them all become factors upon and from which the trial court must base its conclusions.

These importations consisted of three cargoes of lemons. The record does not make clear, except indirectly, the interest and relationship of the witnesses.

The *Monviso*, containing 6,056 boxes, arrived at the port of Baltimore July 3, 1908. Entry was made and duty permit issued July 7, 1908, and the ship was discharged July 8, 1908. July 4 and 5 were legal holidays and entry could not on those days be made. The record shows no unusual delay in voyage. The board found and allowed 30 per cent of decay.

The *Citta di Palermo*, containing 13,000 boxes, arrived May 20, 1908. Entry was made May 21 and duty-paid permits issued May 21 or 22, 1908. The goods were unloaded by May 25 and 26, 1908. There was unusual delay in this voyage, owing to the vessel putting in en route to coal. The board found and allowed 30 per cent of certain portions, 15.5 per cent in others, and 8.5 per cent decay in other portions of this cargo.

The *Sicilia*, containing 8,124 boxes, arrived March 16, 1908. Duty-paid permit was issued March 19, 1908. The cargo was unladen by March 20, 1908.

We have examined the evidence in this case, including all reports of the customs officers, sale catalogues, and notations of decay thereupon by the witnesses, with great care.

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Save in the case of the *Monviso*, we find nothing in the record warranting this court, in the light of its previous decisions, in disturbing the findings of the board. As to the *Monviso*, however, there is no evidence in the record supporting a further allowance than 15 per cent. The board allowance of 30 per cent is accordingly modified. As thus modified, the decision of the board is *affirmed*.

Modified.

(T. D. 32075.)

Rotten fruit—Time of examination.

CUCCIO & CO. *v.* UNITED STATES (No. 319).

IMPORTATION AND NONIMPORTATION.

Whether all, or a portion only, of a cargo of fruit constitutes an importation depends on the facts established by evidence in the particular case. In this particular case the board based its decision on the ground that the evidence offered by the importers was not convincing of error in the return made by the collector and no reason here appears to disturb that finding.—United States *v.* Shallus, *supra* (T. D. 32074).

United States Court of Customs Appeals, November 28, 1911.

TRANSFERRED from United States Circuit Court for Southern District of New York, Abstract 19724 (T. D. 29288).

[Decision affirmed.]

Walden & Webster (*Howard T. Walden* of counsel) for appellants.

Wm. L. Wemple, Assistant Attorney General (*Frank L. Laurence* on the brief), for the United States.

BEFORE MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, JUDGES.

DE VRIES, Judge, delivered the opinion of the court:

This is an appeal from a decision of the Board of United States General Appraisers affirming the action of the collector in assessing duty as lemons upon certain alleged worthless and decayed matter. The importation was at the port of New York. The collector assessed the entire importation, and the importer alleges in his protest that a portion thereof was decayed at the time of importation, and that as to that portion, therefore, there was a nonimportation, for which abatement of duties is claimed.

In United States *v.* Shallus, this day decided, we have considered the law applicable to this case, and it will be unnecessary, therefore, herein to reiterate the principles of law considered.

We, in effect, there held that duties accrue upon imported merchandise at the time the same crosses the line within the customs district; that the importer is entitled to an abatement of duties where there is a nonimportation of the whole or any part of such a cargo; that the provisions of section 2921 of the Revised Statutes relating to a certificate of shortage by the appraiser constitute a rule

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of evidence in specific cases and not an amendment to or repeal of the existing law as above stated; that the amount of decay or shortage of an importation is, therefore, in each case a question of fact to be established as any other probative fact, an issue in the case.

In this case the collector assessed for duty the entire importation. There was no certificate by the appraiser or other customs official of nonimportation in whole or in part of the cargo. Examination was made of the merchandise upon the wharf after it was landed by the importer. The only witness who testified in the case was the importer, who stated he had made a complete and detailed examination. The Board of General Appraisers, weighing the testimony of the importer and the other facts in the record, determined and found that all of these importations which had been examined by the importer within six days after the arrival of the vessel were entitled to certain abatements of duties by reason of a shortage at the time of importation; that all of the shipments which were examined after six days after such arrival of the cargoes were not entitled to such abatements. The board expressly rests its decision upon the ground that the evidence offered by the importer did not convince the board that the return of the collector in the cases specified was incorrect. The board expressly stated that its opinion was not an attempt to make a hard and fast rule as to all cases. We can not read the decision of the board other than a finding of fact relating to the particular importations in question, and applicable to no other importations, and based solely upon the testimony in the record before the board in the particular case.

The board had before it on the one hand the return of the collector, upon the other hand the testimony of the importer. It weighed each carefully and made a specific finding of fact as to each protest and importation. It refused to accept the testimony of the importer in certain instances as sufficient to refute the presumption of correctness of the return of the collector. The record is significant of reasons why the board might decline to accept as conclusive the testimony of the importer as to some of these importations at least. The following is the testimony:

Q. Fruit containing 60 per cent of decay salable?—A. Salable?

Q. Yes. Can you sell fruit containing as much decay as that?—A. Yes. The buyers get stuck.

By General Appraiser SOMERVILLE: Generally state to the purchaser when you sell the goods what your estimate of the rot is?

A. Oh, no; we keep it for ourselves.

Q. Does he examine them himself before he buys?—A. Yes; of course he examines the best samples.

We are unable to discover in this record any cogent reason why the court should interfere with the finding of the board.

Affirmed.

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(T. D. 32076.)

Allowance for tare.

UNITED STATES *v.* BAKER CASTOR OIL CO. (NO. 456).

1. TARE, GENERALLY.

Impurities ordinarily present in an article of merchandise do not constitute tare; only those impurities not ordinarily present in the merchandise as traded in may be the subject of an allowance for tare.—Seeberger *v.* Wright (157 U. S., 183); Shallus *v.* United States (1 Ct. Cust. Appls., 316).

2. TARE IN CASTOR SEEDS.

Without passing on the relevancy, as testimony here, of a certificate showing the results of an analysis made at the place of export, this certificate may be taken as in the nature of an admission against interest, and since it is made apparent that no allowance is commonly made as between seller and buyer of castor seeds, except in cases where the impurities exceed 3 per cent, and then only for the excess over and above 3 per cent, the allowance here should have been, not for 5, but for the excess above 3 per cent, namely, 2 per cent.

United States Court of Customs Appeals, November 28, 1911.

APPEAL from Board of United States General Appraisers, G. A. 7088 (T. D. 30878).

[Decision modified and affirmed.]

Wm. L. Wemple, Assistant Attorney General (*Charles E. McNabb* on the brief), for the United States.

Curie, Smith & Maxwell (*W. Wickham Smith* of counsel) for appellee.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

MONTGOMERY, Presiding Judge, delivered the opinion of the court:

The merchandise involved in this case is an importation of castor seeds or beans. Duty was assessed at the rate of 25 per cent per bushel of 50 pounds under paragraph 266 of the tariff act of 1909. The importers claimed an allowance for dirt, gravel, and other foreign substances, amounting to 4.99 per cent, and filed a protest with the Board of General Appraisers, which protest was sustained. The Government brings the case here by appeal.

The board found as a fact that there was present about 5 per cent of dirt, gravel, etc., and directed a reliquidation accordingly, relying for authority on the case of Seeberger *v.* Wright (157 U. S., 183), and the case turns upon the effect to be given to this decision.

It was said in the opinion of the board that this case has been criticized to some extent by inferior tribunals, but has never been overruled. It is true that the case has been distinguished in numerous other cases by inferior tribunals, and it is also true that it has never been overruled.

It is therefore essential to determine just what that case decided. This is to be determined by ascertaining the question presented to the court. The case was tried under a stipulation and among the facts found by the court was this: The invoices show the gross weight and tare of 5 pounds per bag and a deduction of 4 per cent for impuri-

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ties. The collector, in assessing the duties, deducted the tare, which was the weight of the bags, but refused to allow anything for impurities, assessing a duty of 20 cents per bushel of 50 pounds upon the gross weight, less the tare.

It would appear, therefore, that in the case cited, at least as to the importation there considered, there was an allowance made by the seller for the impurities. There was nothing in the record of that case to show that this was an unusual allowance. As was said by the Court of Appeals in United States *v.* Reid, Murdoch & Co. (120 Fed. Rep., 242), involving imported currants, and in holding that the decision in Seeberger *v.* Wright was not controlling:

> In that case (Seeberger *v.* Wright) * * * it was admitted or proven that it contained 4 per cent of impurities, while there was no proof that the imported article, according to the customs of the trade, contained any such impurity.

So, in dealing with the subject of shelled nuts, the court in Spencer & Co. *v.* United States (143 Fed. Rep., 916), referring to Seeberger *v.* Wright, and United States *v.* Reid, Murdoch & Co., said:

> Both cases make it plain that the important thing is to find out what the shelled nuts of commerce were when paragraphs 269 and 270 were enacted. These impurities are said to have appeared in the nuts since then. If this were so, and if the percentage of impurities has been clearly shown, there would be great force in the contention—

and it was held that no allowance should be made for impurities in an importation when there was nothing to show "abnormal quantities of foreign matter" in the importation, or where the merchandise did not vary from the "ordinary wholesale condition." This case was, on appeal to the Circuit Court of Appeals for the Second Circuit, affirmed on the opinion by the district judge.

The case of Seeberger *v.* Wright was considered by this court in the case of Shallus *v.* United States (1 Ct. Cust. Appls., 316; T. D., 31408), and it was said:

> The principle as to when tare is allowable is stated in effect that tare should be allowed only in such cases where its presence was uncommon to the condition of the merchandise as ordinarily dealt in in trade and commerce. In other words, the ordinary impurities of merchandise do not constitute tare, but the extraordinary impurities, such as are uncommonly present in the merchandise as bought and sold in trade and commerce, are alone the subject of allowance for dutiable purposes.

We think this is a correct interpretation of the Seeberger case.

The importers introduced as a part of their case a certificate made by the Incorporated Oil Seed Association, of London, England, which is claimed to be a report of the analysis of the seed in question, showing clean castor seed, 95.01 per cent; nonoleaginous, 4.99 per cent; fixed allowance, 3 per cent; and to be deducted from invoice, 1.99 per cent, totaling 100 per cent; "say, allowance to buyer, 1.99 per cent."

Government's counsel objected to the introduction of this testimony as hearsay. It was, however, admitted as a part of the *res gestæ*. The objection urged by Government's counsel has much

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force, and it is very doubtful whether the board did not extend the rule of *res gestæ* to facts which as affecting the present issue constituted a past transaction. But as the importer proved the presence of these impurities by other testimony, we do not deem it important to decide this question. In any view, the testimony offered may properly be used to illustrate and limit the testimony of the importer's witnesses, in so far as it militates against their claim, as in the nature of an admission against interest.

The attention of the importer's witness was called to this statement, and the following occurred:

Q. I also find on the right-hand side opposite, "Fixed allowance, 3 per cent." What does that mean?—A. That is the basis on which that seed is bought.

Q. Does that mean that it is bought with a margin of 3 per cent for dirt?—A. Some bought with a margin of 3 per cent, some with a margin of 1 per cent——

Q. I mean as to this particular transaction?—A. Three per cent.

Q. That means there was an allowance of 3 per cent?—A. The difference between 3 per cent and 4.99 per cent.

This is the only testimony showing what the castor seeds of commerce are, and from this it is plainly to be inferred that no allowance is made as between seller and buyer except in cases where the non-oleaginous substance exceeds 3 per cent, and then only for the excess above 3 per cent.

Applying that rule to the present case by accepting the finding of the Board of General Appraisers as to the quantity of impurities contained in the seed under consideration as 5 per cent, the allowance to the importer should have been for 2 per cent only, and the decision of the Board of General Appraisers is modified accordingly.

(T. D. 32077.)

Leakage.

CATALDI AUROLA ET AL. *v.* UNITED STATES (No. 593).

ALLOWANCE FOR BREAKAGE, LEAKAGE, ETC.

The proviso to paragraph 307, tariff act of 1909, forbidding allowance to be made for breakage, leakage, etc., of merchandise therein described, must be strictly construed and can not be made to apply to merchandise not within its terms; but the legality of that provision itself is now *stare decisis*. The board rightly held the leakage here to be dutiable.

United States Court of Customs Appeals, November 28, 1911.

APPEAL from Board of United States General Appraisers, Abstract 24585 (T. D. 31207).

[Decision affirmed.]

Joseph G. Kammerlohr for appellants.

Wm. L. Wemple, Assistant Attorney General (*Wm. A. Robertson* on the brief), for the United States.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

MONTGOMERY, Presiding Judge, delivered the opinion of the court:

This is an appeal from a decision of the Board of General Appraisers affirming the action of the collector in imposing duty upon 24 casks of wine, the sole question being whether the collector erred in refusing to allow a deduction for leakage.

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The report of the collector states that the United States gauger in his return attached to the entry reports certain wantage in excess of normal, which would indicate leakage. Duty was assessed on the amount found by the United States gauger plus wantage in excess of normal outage.

The proviso to paragraph 307 of the act of 1909, corresponding to like provisions in previous acts, reads as follows:

And provided further, That there shall be no constructive or other allowance for breakage, leakage, or damage on wines, liquors, cordials, or distilled spirits. * * *

Two contentions are made: First, that this proviso should be held applicable to goods after their arrival and before delivery to the importer; second, that it is beyond the power to tax goods that never arrived in this country.

It is conceded that the question is not new, as it was considered by the board in Montague's case (T. D. 26086), in which the earlier cases *In re* Saenz & Co., G. A. 5891 (T. D. 25965), and Gilmore's case, G. A. 3692 (T. D. 17644), are reviewed. In the latter case it was said:

The effect of the present tariff law, as contained in said paragraph 244 (corresponding to the proviso to paragraph 307 of the act of 1909), is to bring broken bottles of wines and liquors, which may have been broken on the voyage of importation, within its special scope, and for such a deficiency of this kind of merchandise no allowance is provided. It is, in fact, expressly prohibited.

It is no reasonable objection to this construction of the law that it operates to assess duty arbitrarily upon goods which never arrived in this country. The requirement of the law is that wines and other spirituous liquors mentioned in Schedule H and imported in bottles or jugs "shall be packed in packages containing not less than one dozen bottles or jugs in each package, or duty shall be paid as if such package contained at least one dozen bottles or jugs." One bottle in a package would thus be assessed as if it were a dozen bottles, whether the deficiency may have occurred by accident or design. The validity of such a law was sustained over 20 years ago by Judge Shipman in Bensusan *v.* Murphy (10 Blatch., 530; 3 Fed. Cas., 239), decided by the Circuit Court for the Southern District of New York. The same reasoning applies in favor of the validity of a law which arbitrarily disallows any reduction of duties for loss by breakage, leakage, or other damage.

This case was followed in the Montague case. A review of this decision was sought by the Supreme Court, but the writ of certiorari was denied. See case reported under title of Shaw *v.* United States (203 U. S., 591).

This decision is not inconsistent with the decision of the court in Marriot *v.* Brune (9 How., 619). It was said in that case:

The collection of revenue on an article not existing, and never coming into the country, would be an anomaly, a mere fiction of law, and is not to be countenanced where not expressed in acts of Congress, nor required to enforce just rights.

The provision we are now considering is an administrative provision that was evidently designed to prevent fraud and for convenience in the administration of the customs laws.

So in Stone *v.* Lawder (187 U. S., 281). The Supreme Court, in referring to Marriot *v.* Brune and other decisions said:

It would require a clear expression by Congress of its intention to adopt a contrary policy before a court would be justified in holding that such was the purpose of the legislative branch of the Government—

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that is, a purpose to assess duties upon goods not actually imported, and in that case fruit which had become decayed and practically destroyed in transit was held not subject to duty.

In numerous cases also the court has held that the language of the paragraph in question should be strictly construed, and it has not been applied to forbid allowance for leakage of articles not within the terms of the act. But beyond this the courts have not gone, and indeed every decision which has come under our notice has not only applied the rule fixed by the statute to cases falling strictly within it, but in no case has any doubt as to the constitutionality or validity of the act been expressed, with the exception of Shaw *v.* United States (141 Fed. Rep., 469; T. D. 26488), which was a review of the Montague case, in which case the Circuit Court in its decision made use of the statement that the power to collect duty necessarily implies that there must be some article imported into the United States on which duty is imposed. If this language be assumed to imply a limitation upon the power of Congress to refuse to allow for leakage, where an importation of some quantity of the article still occurs, it is a sufficient answer to say that that case was reversed on appeal to the Circuit Court of Appeals, and the opinion of the board affirmed. United States *v.* Shaw & Co. (144 Fed. Rep., 329). On application for certiorari to the Supreme Court, the writ was denied. (203 U. S., 591.)

The point involved is *stare decisis*, and we think that the question has been rightly decided.

The decision of the Board of General Appraisers is *affirmed*.

(T. D. 32078.)

Peppers in brine.

MICROUTSICOS *v.* UNITED STATES (No. 596).

PAPPERIOS SEED PACKED IN BRINE, PICKLES.

Seed pods of the papperios plant may not be deemed vegetables, but when packed in brine, in view of the marked change indicated by a comparison of the phraseology of paragraphs 252 and 253, tariff act of 1909, and the old law, they must be taken to be pickles, and are dutiable as such under paragraph 253 at 40 per cent ad valorem.

United States Court of Customs Appeals, November 28, 1911.

APPEAL from Board of United States General Appraisers, Abstract 24628 (T. D. 31236).

[Decision affirmed.]

Hatch & Clute (*Edward S. Hatch* and *Walter J. Welch* of counsel) for appellant.

Wm. K. Payne, Deputy Assistant Attorney General (*Wm. A. Robertson* on the brief), for the United States.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

MARTIN, Judge, delivered the opinion of the court:

Under the tariff act of 1909 the appellant imported into this country a consignment of merchandise which was invoiced as twelve barrels of peppers in brine.

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The collector classified the importation as prepared vegetables dutiable at 40 per cent ad valorem within the provisions of paragraph 252 of that act.

The importer protested, contending, among several alternative classifications, that the articles in question should be free of duty as fruits in brine under paragraph 571, or dutiable at 2 cents per pound as prepared edible fruits under paragraph 274, or dutiable at 20 per cent ad valorem as a nonenumerated manufactured article under paragraph 480.

This protest was heard upon evidence by the Board of General Appraisers, and was overruled. In its decision the board expressed the opinion that even if the importations were not properly classifiable as vegetables under paragraph 252, they would nevertheless be subject to an equal rate of duty as pickles under paragraph 253 of the same act.

The importer now prays this court for a reversal of the board's decision.

The pertinent parts of the several paragraphs above referred to read as follows:

252. Vegetables * * * if pickled, or packed in salt, brine, oil, or prepared in any way, * * * forty per centum ad valorem.

253. Pickles * * * forty per centum ad valorem.

274. * * * All edible fruits * * * prepared in any manner * * * two cents per pound.

480. That there shall be levied, collected, and paid on the importation of all * * * articles manufactured, in whole or in part, not provided for in this section, a duty of twenty per centum ad valorem.

571. * * * Fruits in brine (free).

The first inquiry which presents itself is whether the articles in question are either prepared vegetables or pickles; for if they are either they are dutiable at 40 per cent ad valorem, which is the rate of duty assessed by the collector.

As has been stated, the importation was invoiced as peppers in brine. These peppers are the annual seed pods of the papperios plant, which grows in Greece, from which country the present shipment was made. The papperios, as the name indicates, is a pepper plant; it is of perennial growth and attains at times to a height of 6 or 7 feet; it has a woody stem and may be called a bush, or shrub, or a stunted tree. The pods are cut from the plant with a part of the soft, woody stem attached to them; they have a pungent taste and are eaten raw as a relish. Those which are not thus immediately consumed are packed in brine and eaten at meals as an appetizer, very much as olives are eaten. They are never cooked.

The pods are slender and very much resemble common string beans in size and shape. This resemblance is so patent that it immediately suggests their classification as vegetables.

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However, the following well-known definition of vegetables should be consulted before acting upon this resemblance alone:

But in the common language of the people, whether sellers or consumers of provisions, all these are vegetables which are grown in kitchen gardens, and which, whether eaten cooked or raw, are, like potatoes, beets, cauliflower, cabbage, celery, and lettuce, usually served at dinner in, with, or after the soup, fish, or meats which constitute the principal part of the repast, and not, like fruits, generally as a dessert. Nix *v.* Hedden (149 U. S., 304–307).

This definition certainly excludes the articles at bar from its terms, notwithstanding their appearance. For these articles are not herbs of annual growth like those named as illustrations in the foregoing definition, but are the product of a perennial plant; nor are they eaten as articles of substantial food, as are those named in the quotation, but as a mere relish preceding or during the meal to stimulate the appetite for substantial food; and they are certainly not grown in the kitchen garden, but are rather the product of an orchard.

Therefore within the authoritative definition above cited the articles in question can not be classified as vegetables.

The question whether the articles at bar are pickles or not next comes up for decision.

It is of course a matter of common knowledge that almost all pickles are composed of vegetables. This fact likewise appears in the definitions of the dictionaries. The following definition is taken from Murray's New English Dictionary:

Pickles, n.—2. Some article of food preserved in pickle; usually (pl.) vegetables (as cabbage, cauliflower, onions, cucumbers, walnuts, mangoes, etc.) pickled and eaten as a relish.

In those tariff acts which preceded the present one it seems to have been assumed that all pickles were made from vegetables, although this was placing a restriction upon the word which was hardly justified by common usage. In schedule G of the tariff act of 1883 the subject was covered by a provision for "vegetables, in their natural state, or in salt or brine;" in the act of 1890 paragraph 287 provided for "vegetables of all kinds, prepared or preserved, including pickles and sauces of all kinds;" in the act of 1894 paragraph 198 covered "beans, peas, mushrooms, and other vegetables, prepared or preserved, in tins, jars, bottles, or otherwise, and pickles and sauces of all kinds;" in the act of 1897 paragraph 241 named "all vegetables, prepared or preserved, including pickles and sauces of all kinds."

In none of these acts were pickles given an independent classification, but in each of them they were treated as a subdivision of vegetables. This construction was followed by the judicial decisions upon the subject. In the case of Acker *v.* United States (T. D. 28423), the Circuit Court, Southern District of New York, held that

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pickled walnuts were not within the classification of pickles as established by paragraph 241 of the act of 1897, because they were not vegetables. Platt, Judge, in deciding the case said: "In order to be dutiable under the provisions of paragraph 241, the article to be assessed must be a vegetable." This decision stood at appeal at the time of the enactment of the act of 1909, but it was afterwards affirmed by the Circuit Court of Appeals, on the opinion of Judge Platt. (171 Fed. Rep., 77.)

However, in the act of 1909, under which the present importation was entered, a change appeared in the language of the enactment relating to vegetables and pickles. The following is a full copy of the corresponding paragraphs of the acts of 1897 and 1909 relating to this subject:

Act of 1897:

241. Beans, pease, and mushrooms, prepared or preserved, in tins, jars, bottles, or similar packages, two and one-half cents per pound, including the weight of all tins, jars, and other immediate coverings; all vegetables, prepared or preserved, including pickles and sauces of all kinds, not specially provided for in this act, and fish paste or sauce, forty per centum ad valorem.

Act of 1909:

252. Vegetables, if cut, sliced, or otherwise reduced in size, or if parched or roasted, or if pickled, or packed in salt, brine, oil, or prepared in any way; any of the foregoing not specially provided for in this section, and bean stick or bean cake, miso, and similar products, forty per centum ad valorem.

253. Pickles, including pickled nuts, sauces of all kinds, not specially provided for in this section, and fish paste or sauce, forty per centum ad valorem.

It will be observed that the changed language of the act of 1909 in relation to this subject is something more than a mere rearrangement of words in the interest of order or form of expression. To the contrary the change is material and goes to the substance of the classification. Whereas under the act of 1897, as well as the preceding ones, pickles had been directly classified as a kind or product of vegetables, now, after a period of litigation concerning the few kinds of nonvegetable pickles, the controlling enactment is changed so as to remove pickles from the vegetables paragraph and make them a class of themselves. This seems to express a legislative intent to use the word in the sense of its common acceptation. As stated in the above definition, pickles are generally composed of vegetables, but in a few instances might be nuts or like products. In this view the amended classification would make the preparation, characteristics, and use of the articles the determinative factors as to whether they were pickles, and would not arbitrarily limit the class to vegetable products only. It is well known that the word pickles in its ordinary meaning includes some few nuts and like articles which lend themselves readily to such preparation and use.

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The appellant, however, calls attention to the fact that the present paragraph contains the terms "pickles, including pickled nuts," and contends that the foregoing construction is not consistent with this phraseology. Appellant argues that if the word "pickles" *ex proprio vigore* includes pickled nuts, it is unnecessary to follow that word with the provision "including pickled nuts," and that the presence of that phrase in the paragraph implies that without its use pickled nuts are not included within the classification. From this appellant contends that the word has been again used in its former restricted meaning. This argument is certainly a very reasonable one. However, it must be remembered that at the time of the preparation of the tariff act of 1909 the litigation concerning pickled nuts was pending in the courts, and it may well be concluded that the express mention of them in paragraph 253 was made out of an abundance of caution even to the extent of tautology. The presence of the phrase, "including pickled nuts," in the paragraph, does not therefore show that the word pickles had been used in its former restricted meaning but rather that two methods of enlarging the application of the word had been adopted, one by changing the general construction of the applicable provisions and the other by adding the quoted phrase so as expressly to cover that subject of litigation which was then before the courts and therefore distinctly within the legislative attention. According to this view, the word pickles as used in paragraph 253 of the present act includes such articles as these at bar.

It is contended by appellant that the articles at bar are certainly fruits in brine, and that they should therefore be so classified, even if they are also pickles, upon the ground that the first designation is more specific than the latter. Appellant says in that behalf that all fruits in brine may be pickles in the broad sense of that term, and even meats and fish in brine, but that all pickles are not fruits in brine. Hence "fruits in brine" is more specific than "pickles."

In answer to this it may be said that neither class is properly a species of the other nor is either so treated in the act. The class "fruits in brine" does not include the class "pickles" as a species, because most pickles are not fruits at all; and conversely the class "pickles" does not include the class "fruits in brine," as a species, because most fruits in brine are not pickles at all. Therefore the contention that one class is more specific than the other does not seem to afford a safe foundation upon which to predicate a decision of the issue. Nor does the act bring the articles into such a correlation as to justify such a finding.

It therefore appears that the articles in question were dutiable as pickles at 40 per cent ad valorem, which is the rate assessed by the collector and approved by the board, and the board's decision in that behalf is *affirmed*.

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(T. D. 32079.)

Embossed lithographed post cards.

STINER & SON AND BISCHOFF & CO. *v.* UNITED STATES (No. 673).

POST CARDS WITH AN INDENTED EFFECT IN GOLD.

Embossing implies a perceptibly raised surface and a raised surface that is perceptibly a form, figure, or design, but the surface of such a form, figure, or design needs, in order to be embossed, to be raised only above the surface immediately surrounding it and not necessarily above the general surface of the article. Post cards ornamented by a printing in gold on a gelatin surface and impressed with an indented design, producing thereby an effect in relief, are dutiable as cards, "either die cut or embossed," under paragraph 412, tariff act of 1909; and this whether the embossed effect was or was not intended to be produced.

United States Court of Customs Appeals, November 28, 1911.

APPEAL from Board of United States General Appraisers, G. A. 7202 (T. D. 31491).

[Decision affirmed.]

Brown & Gerry for appellants.

Wm. K. Payne, Deputy Assistant Attorney General (*Thos. J. Doherty* on the brief), for the United States.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

SMITH, Judge, delivered the opinion of the court:

The collector of customs at the port of New York classified certain imported post cards as lithographic prints embossed, and accordingly assessed them for duty under the provisions of paragraph 412 of the tariff act of 1909, of which paragraph the following is the part pertinent to the issue:

412. Pictures, * * * cards * * *, and other articles, composed wholly or in chief value of paper, lithographically printed in whole or in part from stone, metal, or material other than gelatin * * * all other articles than those hereinbefore specifically provided for in this paragraph, * * * exceeding eight and not exceeding twenty one-thousandths of one inch in thickness, and less than thirty-five square inches cutting size in dimensions, eight and one-half cents per pound * * * and in addition thereto on all of said articles exceeding eight and not exceeding twenty one-thousandths of one inch in thickness, if either die cut or embossed, one-half of one cent per pound. * * *

To the classification of the merchandise as lithographic prints the importer made no objection. He claimed, however, that the cards were not embossed, and protested that the additional duty of one-half cent per pound imposed upon them by the collector on the assumption that they were embossed should not have been assessed.

The Board of General Appraisers overruled the protest and the importers appealed.

From the samples in evidence and the uncontradicted testimony produced on the hearing it appears that the following are the material and undisputed facts in the case:

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The goods the classification of which is the subject of controversy are souvenir post cards of a special kind and make. The cards differ from the ordinary souvenir post card in that the colors, pictures, figures, and designs with which they are embellished are not impressed directly on the paper, but on a coating of gelatin with which the reverse side of the card is surfaced. According to the testimony the cards are coated by superimposing them on glass plates which have been dipped in gelatin. When the cards are stripped from the plates they carry with them a layer of gelatin and are then ready to be printed. The printing we assume is accomplished by some photolithographic process, but whatever the method employed the result is that a picture or printing which is admitted to be a lithographic print is carried to the surface of the gelatin. If the embellishment of the card stopped at this point it might well be held to be a lithographic print and nothing more. It appears from the testimony, however, that at one stage or another of the manufacture of the cards the gelatin with which they are covered is softened by heat and covered with gold leaf. The cards are then run through a press and over a stamp or plate bearing a pattern or design in relief. The raised pattern or design presses the gold leaf into the gelatin and produces thereon an intaglio of itself in gold. The metal leaf which is not pressed into the gelatin is then brushed off, and the result is a lithographic picture embellished with greetings lettered in gold and with various figure designs and representations traced out in the same material. The board finds that with the exception of the lettering the effects in gold are raised above the surface of the gelatin and are therefore embossed. It is possible that here and there gold leaf which was not pressed into the design or figure stuck to the surface of the gelatin and was not brushed away after the presswork was completed, thereby giving an impression of roughness on passing the hand over the card. We think, however, that the samples and method of manufacture show with reasonable certainty that all lettering, outlines, and designs on the cards in gold, with the possible exception of certain parts of the scrollwork and other designs on Exhibit 3, Protest 419212, are intaglios and not cameos. Yet while that is true as to the ornamental effects in gold, with the exception of the scrollwork, and so forth, just mentioned, it is equally true that in the production of those effects other designs and figures have resulted which stand out in relief from the surface immediately surrounding them.

Thus, in the houses represented in Exhibits 1 and 2, Protest 442169, the boarding, the panes of the windows, the paneling of the doors, the bricks of a chimney, and the double triangular ornament in a gable are all raised above the gold border which immediately bounds them. The same may be said of the American shield and the paneling of the hand organ on Exhibit 3, Protest 419212. These are all forms,

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figures, or designs, and as they are actually raised above the surface which immediately surrounds them and give the impression to the eye of standing out in relief we are of opinion that they are embossed within the accepted meaning of that term. We agree with counsel for the importer that the mere impression on a card of an intaglio design or figure does not necessarily result in the embossing of the surface surrounding it. Embossing implies not only a perceptibly raised surface but a raised surface which is distinctively and perceptibly a form, figure, or design. On the other hand, the surface of an embossed form, figure, or design need not be raised above the general surface of the article. It is enough if it be raised above the surface which immediately surrounds it. Neither does embossing necessarily require that the relief effect shall be directly produced by a die appropriate for the purpose. A die for the making of intaglios may be so used as to develop not only intaglio forms, figures, and designs but corresponding forms, figures, and designs the surface of which is in relief.

As suggested by counsel for the importer, any embossed effect in the cards here under consideration may be purely incidental to the production of the gold effects and may have been wholly beyond the intention of the manufacturers to produce. Nevertheless, if an embossed effect has been produced the fact that it exists and not the intention of the manufacturers must control classification. An attempt was made by the importer to show that cards such as those involved in this appeal are not known to the trade as "embossed cards." We think that no question of commercial designation can arise under that part of paragraph 412 which imposes an additional duty of one-half of 1 cent per pound on pictures, calendars, cards, and other articles of paper "if either die cut or embossed." Even if it be admitted that the term "embossed cards" has a specific trade meaning—that is to say, a general, uniform, and definite signification which identifies to the trade a certain distinct class of cards and distinguishes that class from all others—the admission avails nothing, for the simple reason that the duty is not laid on "embossed cards," but on cards and other articles "if either die cut or embossed." As there is no evidence in the record which would justify the conclusion that the phrase "if either die cut or embossed" conveys to the trade and commerce of the country a meaning or signification different from that conveyed by it to the popular mind, we must conclude that to that particular part of the paragraph no other interpretation should be given than that justified by the common, ordinary meaning of the terms used.

The decision of the Board of General Appraisers is *affirmed*.

De Vries, Judge, did not sit.

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(T. D. 32080.)

Metal hoes.

UNITED STATES *v.* ANDERSON & CO. (No. 727).

FORGINGS ADVANCED IN CONDITION.

Comparing paragraph 127, tariff act of 1897, with paragraph 123, tariff act of 1909, and especially taking into view what would appear to be a manifest legislative intention with respect to paragraph 123, as evidenced by its history, a forging is advanced in condition when the burr on the edge of the rough-forged article is removed by passing it over a grindstone, and a hoe rough forged, but so manipulated, is dutiable under pargaraph 123.

United States Court of Customs Appeals, November 28, 1911.

APPEAL from Board of United States General Appraisers, G. A. 7243 (T. D. 31740).

[Decision reversed.]

Wm. L. Wemple, Assistant Attorney General (*Thos. J. Doherty* on the brief), for the United States.

No appearance for appellee.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

BARBER, Judge, delivered the opinion of the court:

The importation in this case is a diamond shaped hoe with a shank for attaching thereto a handle, in which shank is a hole apparently to aid in holding the handle in place by means of a rivet or screw to be inserted therein. Duty was assessed under paragraph 199 of the tariff act of August 5, 1909, the pertinent part of which is as follows:

199. Articles or wares not specially provided for in this section, composed wholly or in part of iron, steel, * * * or other metal, and whether partly or wholly manufactured, forty-five per centum ad valorem.

The importers protested, claiming them to be dutiable under paragraph 123 of the same act, the material part of which is as follows:

123. * * * Forgings of iron or steel, or of combined iron and steel, but not machined, tooled, or otherwise advanced in condition by any process or operation subsequent to the forging process, not specially provided for in this section, thirty per centum ad valorem. * * *

The Board of General Appraisers sustained the protest and reversed the action of the collector.

This cause is heard upon the record and brief of the Government, the importer not having filed any brief or made any argument before us.

No testimony was introduced before the board, except one witness on behalf of the importers. Therefrom it appears and the board found that these hoes are first rough forged from steel bars and then the burr which is left on the edge of the hoe by the forging process is removed by passing it over a grindstone. The hoes were not further manipulated, but were dipped in oil prior to being shipped.

In sustaining the protest, as appears from its decision, the board held that the reasoning of this court in the case of Prosser *v.* United

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States (1 Ct. Cust. Appls., 550) was controlling. In that case the statute especially construed was paragraph 127 of the tariff act of July 24, 1897, the material part of which for the purposes of this case is as follows:

127. * * * Forgings of iron or steel, or of combined iron and steel, of whatever shape or whatever degree or stage of manufacture, not specially provided for in this act, thirty-five per centum ad valorem. * * *

In that case we held in substance that, with the development of improved methods and high-class machinery, it had been found more economical and that better and speedier results could be obtained by not trying to forge close or to remove from a forging in the forge shop surplus metal from a part thereof not readily accessible; that the rough turning or rough machining to which the merchandise involved in that case had been subjected was a substitute rather than an additional process, and was designed to finish the forging as such and not to complete the article evolved thereby; and that a forging as commonly understood might be defined to be a creation of forging processes; an article of metal shaped or formed by hammering or allied methods producing substantially the same results as hammering.

The Board of General Appraisers in this case, as appears from its decision, invoked that definition of forging and held that the work performed on the importations here was not other than forging work, and that they had not been advanced by processes other than forging and were, therefore, entitled to be so classified under paragraph 123.

We think in so applying the reasoning of the Prosser case the board, probably inadvertently, failed to give full force to the changes in paragraph 127 of the act of 1897 as the same appear in paragraph 123, above quoted. It will be noted that under paragraph 123, if a forging has been machined, tooled, or otherwise advanced in condition by any process or operation subsequent to the forging process it is not classifiable thereunder, while paragraph 127 of the act of 1897 provided that forgings of whatever degree or stage of manufacture should still be so classified.

In the Prosser case we undertook to say in substance that substituted processes which had for their sole purpose the removing of the surplus metal from rough forgings, when it appeared that such processes were applied because greater economy and better results could be obtained, did not deprive the article of its character as a forging.

We think, however, that Congress, by the enactment of paragraph 123, clearly determined that such a substituted process would take the article out of the classification as a forging if thereby it was advanced in condition, because it declares in effect that if machined, tooled, or otherwise advanced in condition by any process or operation subsequent to the forging process it shall not be so classified.

Now, in the case at bar, it is conceded that the merchandise has been subjected to a process or operation subsequent to the forging

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process in that the burr on the edge of the tool has been ground off upon a grindstone.

It is apparent that by the removal of the burr on the edge of the hoes in question by the grinding process after the forging processes have been applied, these hoes have been advanced in condition because it is evidently desirable for their ordinary and most advantageous use that such burr should be removed. It is the final step in the processes of this manufacture.

Congress would seem to have intended by paragraph 123 that it should be a question of fact as to whether any process subsequent to that of forging had been used, and if so, the article would be deprived of its right to be classified as a forging if by such subsequent process it had been advanced in condition. It is not, we think, an answer to this to say, as is said in this case, that the forging processes might have been applied to have produced the same result as the grinding; the question is, what processes in fact have been employed in producing the article, and if it appears, as here, that a process other than forging has been subsequently used and the condition thereby advanced, then the article no longer has a right to be classified as a forging. In other words, Congress has seen fit to make that the test.

It is true that the manufacturer may, by the methods employed in manufacturing an article, determine its classification, but that is not a novel doctrine. In United States *v.* Meadows (2 Ct. Cust. Appls., —; T. D. 31665), which, among other things, involved the question of whether cotton or leather was the component material of chief value of certain slippers, we held in substance that it was proper to inquire into the chronological order in which the component materials were united; that it did not matter if it appeared that by the adoption of a different order in combining the materials a different classification would have resulted; that the question in each case would among other things be determined upon the fact as to when—that is, in what order—the combination was made; that a manufacturer might find it on the whole to be to his advantage, in view of the results obtained, to make a combination in such a way chronologically as would effect the classification, and that he could do so at his own option.

This observation is especially applicable to the case at bar, for it appears from the evidence that although it is possible for the manufacturer to take the burr off from the edge of the hoe with a forge hammer instead of by the grinding process, yet it would cost ten times as much to do it that way, and it may be that on the whole it is commercially more advantageous for the manufacturer to produce these hoes so that they pay the higher rate of duty rather than to incur the greater expense of turning them out by the forging process so that they may take the lower one.

There is another reason, we think, which requires that paragraph 123 be given the construction we have indicated. At the time the

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act of 1909 was enacted the Prosser case above referred to was pending, and not only in that case but in others theretofore decided there had been much difficulty and disagreement as to the construction to be given paragraph 127 of the act of 1897. The attention of Congress was directed to this matter in "Notes on Tariff Revision," prepared for the use of the Committee on Ways and Means in making up the tariff act of 1909, where it appears that some of the decisions on the subject of what were forgings were referred to, the respective claims of the Government and the importers relating thereto succinctly set forth, and an amendment of paragraph 127 was suggested which it was thought stated precisely in what degree of finishing or completion forgings might be imported without being construed as advanced from the class of forgings for tariff purposes. Congress adopted the amendment in the precise language as suggested by the compiler of the work. (See Notes on Tariff Revision, p. 154.)

We think thereby it accomplished that object and that it is plain that thereunder it is a question of fact whether or not an article has been advanced in condition by machining, tooling, or by any other process or operation subsequent to the forging process, and that when it so appears the article can not longer be classified as a forging.

We hold, therefore, that the board erred in sustaining the protest in this case, and its judgment is *reversed*.

(T. D. 32081)

Celery seed.

UNITED STATES *v.* SQUIBB & SONS (No. 732).

1. JUDICIAL NOTICE.

Judicial notice will be taken of the prominent, important, and generally known facts of vegetable growth and life; but such facts as are of minor importance, not actually within the sphere of common observation and knowledge, will not be judicially noticed, even though such facts may be ascertained by reference to technical treatises.

2. CELERY SEED, AROMATIC VARIETY.

The evidence here, while not ample, is sufficient to support the finding that the importation was not garden celery seed, but celery seed of the aromatic kind, used commonly in the drug trade and as such was free of duty.

United States Court of Customs Appeals, November 28, 1911.

APPEAL from Board of United States General Appraisers, Abstract 26002 (T. D. 31727).

[Decision affirmed.]

Wm. L. Wemple, Assistant Attorney General (*Wm. A. Robertson* on the brief), for the United States.

Leigh Donburgh for appellee.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

MARTIN, Judge, delivered the opinion of the court:

Under the tariff act of 1909 the appellee imported into this country a consignment of celery seed. Such seed is entitled to free entry by

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favor of paragraph 559 of that act if it be aromatic as distinguished from garden celery seed; if the seed be garden celery seed it is dutiable at the rate of 10 cents per pound by provision of paragraph 266 of the act as a seed not specially provided for.

The collector held that the importation was garden celery seed and assessed the same accordingly.

The importers filed their protest to this action of the collector and contended that the seed was not garden celery seed, but was in fact the aromatic variety and therefore entitled to free entry.

This protest was tried upon evidence to the Board of General Appraisers, and the board held it well taken and directed reliquidation accordingly. The Government now seeks a reversal of this decision of the board. The sole question in the case therefore is whether the decision of the board is sustained by sufficient evidence or not.

The evidence in the record tends to show that the importers are chemists engaged in the manufacture of medicines; that the seed in question was bought of a firm who dealt in crude botanical drugs, but not in garden seeds; and that the seed was in fact ground by the importers and made up into pharmaceutical preparations. One witness, J. Ernest Bradshaw, superintendent for a firm dealing in botanical drugs, including celery seed, testified from a sample of the seed that it looked to him to be a fair sample of the celery seed of the drug trade. Another witness, A. Lowell, who had served for 10 years in the employment of a large wholesale drug establishment, testified that he did not possess a very extensive knowledge of botanical drugs, but that he knew celery seed; that the wholesale druggists by whom he had been employed handled celery seed, but not the garden variety; and that the sample of the seed in question had the same general appearance as the celery seed which the drug firm handled at the time of his connection with them.

The sample of the importation which was exhibited to the witnesses, as above appears, was filed with the board, and is now before the court. The Government called no witnesses, and the foregoing is substantially all the evidence which was submitted to the board. Upon this evidence the board held with the importers.

While the testimony in support of the importers' claim is not very full or very convincing, yet in the absence of contradiction or avoidance it seems to be sufficient to serve as a predicate for the board's decision. The decision is certainly not wholly unsupported by evidence, nor is it clearly contrary to the weight of the evidence. It seems to be conceded that the two varieties of celery seed look very much alike. The testimony, as above outlined, is to the effect that drug houses deal, or at least profess to deal, only in the aromatic variety of celery seed; that the seed in question was bought by one such

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firm from another like firm; that it was treated as aromatic seed by its use in pharmaceutical preparations; and that two witnesses who had seen and handled the aromatic seed rather feebly identified this article as belonging to that class.

The Government contends that in the garden variety of celery seed each seed has 12 oil ducts, while in the aromatic variety each has but 6 such ducts; and it was suggested in the oral argument that this court would be able to find by examining the sample under the microscope that each seed has in fact 12 such oil ducts. The Government suggested in the oral argument that the court should thus supplement or complete the record, and inform itself of the facts by its own investigation in the premises.

However, it seems to be very doubtful whether the court should take judicial notice of the alleged fact that each variety of celery seed has a given number of oil ducts. There is nothing at all in the testimony upon this subject.

Courts will take judicial notice of the prominent, important, and generally known facts of vegetable growth and life; but such facts as are of minor importance to the community in general and are therefore not actually within the sphere of common observation and knowledge will not be judicially noticed, even though such facts may be ascertained by reference to technical treatises upon the subject.

And if the alleged fact concerning the oil ducts is not within judicial knowledge, it becomes even more doubtful whether in such case the court should undertake to inform itself upon the subject by a microscopical examination of the exhibit. Such an investigation made by the court in the absence of the parties, not for the purpose of better understanding or interpreting the testimony in the record, but rather for the purpose of bringing into the case a new line of evidence not even suggested by the record, would not be authorized by correct rules of procedure.

On the whole, therefore, it seems that the testimony upon which the case was submitted to the board and upon which its decision was founded is sufficient to sustain that decision, and it is *affirmed*.

(T. D. 32082.)

Samples—Free entry.

T. D. 31771 of July 25, 1911, modified.

TREASURY DEPARTMENT, *December 11, 1911.*

SIR: In view of the many questions which have arisen as to the interpretation to be given to the department's decision of July 25, 1911 (T. D. 31771), providing for the free entry of samples, it is

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deemed necessary to more specifically define the scope of the said decision. This decision is not to be construed to permit free entry of articles suitable for use or sale as merchandise in the condition in which imported.

Pieces of cloth, edgings, laces, embroideries, upholstery goods, and all textile fabrics not exceeding in dimensions the usual commercial samples may be admitted free regardless of their commercial value.

Textile samples which exceed the dimensions specified below should be classified for duty as merchantable cloth:

Woolen dress goods 36 inches in length.

Woolen cloth for men's wear, if not suitable for vestings, 27 inches in length.

Woolen cloth suitable for vestings 18 inches in length.

Plain cotton cloths and linens 36 inches in length.

Silk cloths of all kinds 18 inches in length.

(Silk dress goods in small assorted lots obviously imported for use as samples may be admitted free up to 27 inches in length.)

Silk trimmings and braids 12 inches in length.

Carpets 1¼ yards in length. All carpet samples must be slashed.

Upholstery goods 80 centimeters by 140 centimeters.

Velvets, not cut on the bias, plushes, and linings 18 inches in length.

All plain fabrics not specified above 36 inches in length.

Articles suitable for use or sale as merchandise should not be admitted free as samples unless cut or punched or conspicuously and indelibly stamped or printed with the word "Sample" in such manner as to prevent their use or sale as merchandise.

Articles suitable for use or sale as merchandise not cut or stamped as above required will be assessed with duty as merchandise.

Wines, spirits, liquors, and other liquids will be assessed with duty regardless of the size of the containers in which imported.

Articles imported for free distribution as advertising matter rather than as commercial samples, if suitable for use or sale as merchandise, will be assessed with duty.

Articles reported by the appraiser as samples not fit for use or sale as merchandise will be admitted free, notwithstanding the same may have an invoiced or entered value.

The department's decision in T. D. 31771 of July 25, 1911, is modified accordingly.

Respectfully, JAMES F. CURTIS,
(80555.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 32083.)

Fines on masters of vessels.

Violations of sections 2797 and 2809, Revised Statutes, to be reported to the department. Applications for remission to be accompanied by full statement of facts.

TREASURY DEPARTMENT, *December 14, 1911.*

To collectors and other officers of the customs:

The department is informed that there is a lack of uniformity at the several seaboard ports in the matter of imposing fines under sections 2797 and 2809 of the Revised Statutes. Collectors are therefore instructed that whenever any goods or sea stores are found on board a vessel arriving from a foreign country which are not mentioned or described in the manifest or store list of such vessel, a fine should be imposed on the master equal to the value of the merchandise not manifested, or three times the value of the sea stores not listed.

If it be shown to the satisfaction of the collector, naval officer, and surveyor, or a majority of them, or to the satisfaction of the collector alone where there is no naval officer or surveyor, that the manifest has been lost or mislaid without fraud or collusion, or became incorrect by mistake, no fine will be imposed.

That the master had no knowledge that the goods not manifested or listed were on board is not sufficient to relieve him from the penalty. The *Helvetia* (6 Benedict, 51); the *Queen* (11 Blatch., 416).

All action taken under sections 2797, 2809, and 2810, Revised Statutes, whether or not a fine is imposed, should be reported to the department.

All cases where prohibited opium is found on board a vessel not manifested the fine should be imposed, as in the opinion of the department such cases do not fall within the provisions of section 2810, Revised Statutes. The value of the prohibited opium for the purpose of assessing the fine under section 2809, Revised Statutes, is the foreign value.

In transmitting to the department applications for remission of fines of less than $1,000 imposed for violations of the revenue laws collectors should submit with the application a full statement of the facts and circumstances surrounding the case, together with a recommendation thereon. Where the fine is more than $1,000 no remission can be made by the Secretary of the Treasury except after a summary investigation held in the manner prescribed in sections 17 and 18 of the act of June 22, 1874. See articles 1273 and 1274 of the Customs Regulations of 1908.

JAMES F. CURTIS, *Assistant Secretary.*

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(T. D. 32084.)

Human hair.

Human hair which has been drawn to some extent and has been partially cleaned is not the drawn and cleaned hair of commerce, and is, therefore, free of duty under paragraph 583, tariff act of 1909.

TREASURY DEPARTMENT, *December 13, 1911.*

SIR: The department duly received your letter of May 25 last, transmitting a communication from the appraiser in which he recommends that certain combings of human hair be assessed with duty under paragraph 442 of the tariff act at the rate of 20 per cent ad valorem, the merchandise now being admitted free of duty under paragraph 583 of the said act.

It appears from your letter of July 5, 1911, that the hair under consideration prior to importation is subjected to manipulation for the purpose of straightening out the hair; that the manipulation generally results in a partial cleaning and may be carried to the point where the hair is drawn to practically the same lengths and bunched together.

You state that this hair in its crudest form, while referred to by importers as "drawn," is claimed by them not to be commercially drawn and that after importation it is necessary to redraw, clean, and turn; that is, arrange the root ends together and tip ends together, and then redraw again.

You report that the hair is dirty in its condition as imported and that the roots and tips are indiscriminately mixed and must be turned before being capable of use.

The department is of the opinion that there is considerable merit in the position of the appraiser that the merchandise is properly dutiable under paragraph 442 of the tariff act, and if the question were before the department as an original proposition it would feel inclined to issue instructions for the assessment of duty upon such hair. However, as the department formally acquiesced (T. D. 9441) in the decision of the United States Circuit Court for the Southern District of New York, Lewisohn *v.* Magone, wherein it was held that certain human hair imported under the tariff act of 1883 was properly classified as "human hair, raw, uncleaned, and not drawn," and as this decision has been followed in the classification of like merchandise under the tariff acts of 1890, 1894, 1897, and 1909, the language of the acts in this regard being identical, the department must give weight to this long-continued practice.

The evidence concerning the merchandise, the subject of the court's decision above referred to, showed that while the hair had been drawn to some extent and had been partially cleaned, it was not the drawn and cleaned hair of commerce, and the evidence further showed

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that the drawn hair of commerce consists of bunches of individual hairs all of the same length, all of the roots being at one end and the points at the other, and very highly cleaned. Attention is invited in this connection to the decision of the board of July 18, 1893, G. A. 2216 (T. D. 14252), wherein it was held that certain human hair in small bunches, assorted as to color, and which appeared to have been drawn and cleaned to some extent, but which was not arranged with all the roots at one end and the points at another, was entitled to admission free of duty under paragraph 604 of the tariff act of 1890. Attention is also invited to the decision of the United States Circuit Court of Appeals, First Circuit, United States *v.* Proctor (T. D. 27115), that a settled practice of the Treasury Department for many years in the classification of imported merchandise, where ordinarily there might have been a doubt, affords a rule of statutory construction of the highest authority and that a long-continued construction given certain phraseology in several acts may be considered as accepted by Congress in reenacting the same provision in subsequent laws.

Moreover, certain importers suggested to the Ways and Means Committee, when the present tariff act was in course of preparation, that the act provide as follows: "Human hair, raw, uncleaned, free; human hair, drawn, cleaned, and turned, 25 per cent," and that a new paragraph be carried into the act as follows: "Human hair, cleaned, drawn, but not turned, 15 per cent." As neither of these provisions was carried into the present act, it strengthens the view that Congress did not desire to make any change in the law relating to the classification of human hair, which had been settled by the decisions of the board and the court and by the acquiescence of the department therein.

In view of the foregoing, the department does not deem it expedient to authorize a change in the classification of the merchandise under consideration.

Respectfully, JAMES F. CURTIS,
(88550.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 32085.)

Silk noils.

Silk noils the fibers of which are less than 2 inches in length, free of duty under paragraph 673, tariff act of 1909. Silk noils the fibers of which are more than 2 inches in length, dutiable under paragraph 396 of the said act.

TREASURY DEPARTMENT, *December 15, 1911.*

SIR: Referring to T. D. 31824 of August 18, 1911, relative to the classification of silk noils, I have to inform you that the proper

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classification of such merchandise has been carefully reconsidered after a further investigation of the questions presented.

Silk noils constitute a by-product in the manufacture of spun silk from waste silk or pierced cocoons. The waste silk or cocoons are (1) sorted, (2) boiled, (3) washed by machinery, and (4) hackled. Silk in this condition constitutes "silk partially manufactured from cocoons or from waste silk," and is dutiable at the rate of 35 cents per pound under paragraph 396 of the tariff act.

After the silk is hackled it is combed or dressed. The first combing results in about 50 per cent of the hackled silk being taken from the combing machine or dresser as combed silk, and about 48 per cent as noils. Such noils are usually termed "first draft noils," and still contain approximately 37½ per cent of the total quantity of the silk fibers to be recovered as combed silk by the entire combing process, about 62½ per cent having been recovered in the first combing. The noils are then again combed or dressed, the resulting products being termed "second draft silk" and "second draft noils," respectively. Such noils are again combed and result in "third draft silk" and "third draft noils." Such process is repeated until the noils have been combed four or five times in addition to the first combing of the hackled silk. By these repeated combings all the silk suitable for use in silk spinning is separated from the short fibers, tangled ends, and refuse matter, which are sometimes termed "exhausted noils" and are not suitable for use in the manufacturing of what is commercially known as spun silk yarn, but are sold for use in the manufacture of other yarns or fabrics.

It is obvious that the noils resulting from the first, second, and subsequent combings have not lost their dutiable status as "silk partially manufactured" until they shall have become some other article provided for by the tariff act. This is not accomplished until the usable silk has become exhausted, when the noils become, so far as the manufacture of spun-silk yarn is concerned, a waste. While such exhausted noils are not commercially known or bought and sold as silk waste, they are, in fact, a waste, and have been classified free of duty as "silk waste" for many years.

The department is, therefore, of the opinion that silk noils other than exhausted noils are subject to duty under the provisions of paragraph 396 of the existing tariff act, and that such exhausted noils are, in fact, silk waste, and as such are free of duty under the provisions of paragraph 673 of the said act.

It further appears that, while there may be an occasional long silk fiber in such exhausted noils, the noils will be principally composed of fibers less than 2 inches in length, and that silk noils composed principally of fibers which are more than 2 inches in length do not,

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in fact, constitute noils from which the usable silk has been exhausted and are not, therefore, a waste.

You are, therefore, instructed that on and after December 16, 1911, all silk noils composed principally of fibers which are more than 2 inches in length will be classified as dutiable under paragraph 396 of the tariff act, and all such noils composed principally of fibers which are less than 2 inches in length will be classified as free of duty under paragraph 673 of the said act.

To insure a uniformity of classification care will be taken by appraising officers that samples of all noils passed by them under each classification shall be forwarded to the United States Appraiser at New York in accordance with T. D. 31936 of October 21, 1911.

Respectfully, JAMES F. CURTIS,
(84034.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 32086.)

Resealing of bonded cars in certain cases.

In case of a wreck or a car becoming disabled, the agent of the carrier or the conductor may reseal the car where the necessity arises outside the limits of a port; if within the limits of a port the resealing should be done by customs officers.

TREASURY DEPARTMENT, *December 11, 1911.*

SIR: The department is in receipt of your letter of the 6th instant relative to the removal by the employees of bonded transportation companies of customs seals from cars of bonded merchandise under certain conditions.

The department has held that in cases in which it becomes necessary to remove the customs seals from a car for the purpose of transshipping merchandise to another car in the case of a wreck or of a car becoming disabled, or in order to make necessary repairs, the station agent of the transportation company or the conductor of the train may remove such seals when the necessity therefor arises at a place outside the limits of a port, and that in such cases the employee of the carrier who breaks such seals must note on the carrier's special manifest, over his signature, the date thereof and the reasons therefor, and shall notify the chief officer of the customs at the port of destination of such action.

In cases in which it becomes necessary to remove such seals within the limits of a port of entry or delivery, the carrier should notify the chief officer of the customs at such port and an officer should be detailed to remove the seals, supervise the transshipment, and to seal the car to which the merchandise is transshipped.

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The practice of permitting such employees of transportation companies to remove seals in the cases specified is permitted in order to avoid the delay to transportation companies and to importers and the expense to the Government which would ensue if an inspector were detailed to perform such service outside the limits of a port.

In all cases in which seals are so removed any shortage from the invoiced quantity found at the port of destination will be presumed to have occurred while the merchandise was in transit and the carrier held for the payment of duties thereon under its common carrier's bond, unless it affirmatively appears that such shortage occurred prior to the arrival of the merchandise in this country.

Respectfully, JAMES F. CURTIS,
(32448.) *Assistant Secretary.*
SURVEYOR OF CUSTOMS, *Albany, N. Y.*

(T. D. 32087.)

Additional list of customs notaries.

[Omitted from this edition.]

(T. D. 32088.)

Vegetable ivory nuts.

Vegetable ivory nuts sawed into slabs free of duty under paragraph 596, tariff act of 1909, as vegetable ivory in its natural state. Ivory-nut blanks dutiable under paragraph 427 of the said act.

TREASURY DEPARTMENT, *December 16, 1911.*

SIR: I have to acknowledge the receipt of your letter of the 11th instant in which you state that the samples submitted by the department would, if imported through your port, be classified as follows:

The samples contained in envelope No. 1, which are vegetable ivory nuts, you state would be admitted free of duty under paragraph 596; that the samples contained in envelope No. 2, and which consist of ivory nuts sawed into slabs, would be assessed with duty as manufactures of vegetable ivory under paragraph 464 at the rate of 35 per cent ad valorem, and that the samples contained in envelope No. 3 would be classified as vegetable ivory button blanks at the appropriate rates provided under paragraph 427; that is, at the rate of three-fourths of a cent per line per gross and 15 per cent ad valorem.

The department concurs in the views expressed by you as to the classification of the samples contained in envelopes Nos. 1 and 3. The samples in No. 2 consist of ivory nuts sawed into slabs, and in

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the opinion of the department are entitled to admission free of duty under paragraph 596 as "vegetable ivory in its natural state," following the decision of the Board of United States General Appraisers of August 3, 1909, Abstract 21688 (T. D. 29946), wherein it was held that certain lotus lily roots which had been washed, cleaned, sliced, and dried were entitled to classification under paragraph 257 of the tariff act of 1897 as vegetables in their natural state.

Respectfully, JAMES F. CURTIS,
(37653.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Rochester, N. Y.*

(T. D. 32089.)

Abstracts of decisions of the Board of General Appraisers.

Board 1.—Sharretts, McClelland, and Chamberlain. *Board 2.*—Fischer, Howell, and Cooper. *Board 3.*—Waite, Somerville, and Hay.

BEFORE BOARD 1, DECEMBER 12, 1911.

No. 27357.—PROTESTS OVERRULED.—Protest 526177 of Taylor Instrument Co. (Rochester). Opinion by Sharretts, G. A.

Protest overruled for want of merit.

No. 27358.—PROTESTS OVERRULED.—Protest 528279 of F. W. Myers & Co. (Burlington), protests 290667, etc., of C. Rossi et al., and protests 422686, etc., of Ignaz Strauss & Co. et al. (New York). Opinions by McClelland, G. A.

Protests overruled for want of merit.

No. 27359.—PROTESTS OVERRULED.—Protests 524056, etc., of Fritzsche Bros. et al., and protests 451391, etc., of C. Perceval et al. (New York). Opinions by Chamberlain, G. A.

Protests overruled for want of merit.

BEFORE BOARD 2, DECEMBER 12, 1911.

No. 27360.—WINDOW PAPER—DECORATED PAPER.—Protests 506622, etc., of F. B. Vandegrift & Co. (New York.). Opinion by Fischer, G. A.

Protests sustained as to decorated paper for making window paper. Abstract 26611 (T. D. 31866) followed.

No. 27361.—CORSET CLASPS AND STEELS.—Protests 478955, etc., of E. de Grandmont et al. (New York).

FISCHER, *General Appraiser*: The goods are corset clasps and steels, which appear from the record to be in chief value of flat steel wire. They are made of flat wire covered with materials such as kid, satin, rubber, etc., and have been assessed with duty at 40 per cent ad valorem under that proviso in paragraph 135, tariff act of 1909, which reads:

That no article made from or composed of wire shall pay a less rate of duty than forty per centum ad valorem.

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It is claimed that the said articles are dutiable properly under that part of paragraph 135 which reads:

Corset clasps, corset steels, dress steels, and all flat wires * * * shall pay a duty of not less than thirty-five per centum ad valorem.

The paragraph, so far as it relates to corset clasps, corset steels, and flat wires, prescribes that such articles shall not be dutiable at less than 35 per cent ad valorem. No fixed or primary rate is provided in the paragraph for articles of that specific description, and classification for the same must of necessity be sought under the more general descriptions found elsewhere in the act. If the fixed rate so found is lower than 35 per cent ad valorem, then the minimum rate applies. If not, we could have no recourse to the minimum rate, for its object is to prevent a classification of such goods at a lower rate of duty, and it in no way prevails over an imposition of a higher applicable rate of duty.

The only issue before us under this view of the case would be what is the applicable primary rate for these goods. It may very well be that they are dutiable at 45 per cent ad valorem under paragraph 199 in the absence of any other appropriate fixed rate. In any event there is nothing in the record that would warrant us in holding the minimum rate applicable in these cases. The protests are overruled, and the decision of the collector in each case will stand.

No. 27362.—Cylindrical Metal Containers.—Protests 427119, etc., of Fritzsche Bros. (New York). Opinion by Fischer, G. A.

Protests sustained as to cylindrical metal containers on the authority of United States *v.* Garramone (T. D. 31577) and United States *v.* Braun (T. D. 31596).

No. 27363.—Protests Dismissed.—Protests 482734, etc., of Lehigh Manufacturing Co. et al. (Philadelphia). Opinion by Fischer, G. A.

Protests dismissed on stipulation.

No. 27364.—Protests Overruled.—Protests 333568, etc., of Newman-Andrews Co. et al. (New York). Opinion by Fischer, G. A.

Protests overruled for want of merit.

No. 27365.—Manila Hemp Plaits.—Protests 463639, etc., of American Express Co. et al. (New York). Opinion by Howell, G. A.

Protests sustained as to manila hemp plaits on the authority of Abstract 25927 (T. D. 31720).

No. 27366.—Elastic Belts.—Protest 449355 of John Wanamaker (New York).

Howell, *General Appraiser:* This protest has been limited to the goods represented on invoice 17766 by item numbers, * * * which were returned by the appraiser as "silk, cotton, india rubber, and metal wearing apparel," and were assessed for duty by the collector at the rate of 60 per cent ad valorem under the provision in paragraph 402, tariff act of 1909, for "articles of wearing apparel of every description, * * * composed of silk, or of silk and metal, or of which silk is the component material of chief value, whether in part of india rubber or otherwise." The importers claim that the goods are properly dutiable as manufactures in chief value of metal at the rate of 45 per cent ad valorem under paragraph 199 of said act. Other claims are made in the protest, but they are not relied on by the importers.

The appraiser reports that the goods in question consist of "elastic belts composed of silk, cotton, and india rubber, studded with steel points in various designs." There are no samples of the goods before us, but the testimony of the examiner who had the goods before him for examination and who made the advisory classification, shows to our satisfaction that the goods are composed in chief value of metal.

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Under the tariff act of 1897, in passing upon silk elastic belts with fancy metal buckles and steel-point ornamentation, metal being the component material of chief value in the completed belt, the board held in G. A. 6675 (T. D. 28480) that notwithstanding the fact that metal was the component material of chief value in the completed belts, they were dutiable under paragraph 390 of said act by virtue of the proviso to the paragraph, inasmuch as they were composed in part of india rubber. On appeal the decision of the board was reversed by the Circuit Court for the Southern District of New York in Simpson-Crawford Co. *v.* United States (172 Fed. Rep., 301; T. D. 29836), the court holding that articles of wearing apparel fell within the provisions of said paragraph 390 only when such articles were composed in chief value of silk, and that elastic belts composed in chief value of metal were dutiable as manufactures in part of metal under paragraph 193 of said act. On further appeal the decision of the Circuit Court was affirmed without opinion by the Circuit Court of Appeals for the Second Circuit (178 Fed. Rep., 1006; T. D. 30551).

In the tariff act of 1909 the provision (par. 402) which corresponds with paragraph 397, tariff act of 1897, has been changed so as to embrace within its terms not only articles of wearing apparel composed in chief value of silk but also all such articles when made of silk and metal and whether composed in part of india rubber or otherwise. No provision, however, is made therein for goods like those here in question, which are neither composed in chief value of silk, nor are they composed of silk in combination with metal and india rubber only. These articles are composed of silk, metal, cotton, and india rubber, metal being the component material of chief value, and on the authority of the decision of the Circuit Court of Appeals, *supra*, we hold that they are properly dutiable as manufactures in part of metal at the rate of 45 per cent ad valorem under paragraph 199, tariff act of 1909.

The protest is sustained to this extent, and the entry will be reliquidated accordingly. In all other respects the protest is overruled.

No. 27367.—Silk Fabrics.—Protests 431511, etc., of François Coste (New York). Opinion by Howell, G. A.

Silk fabrics classified as ungummed in part, under paragraph 399, tariff act of 1909, were held dutiable as silk fabrics in the gum, as claimed by the importer.

No. 27368.—Malines Nets.—Protests 408211, etc., of F. Ludewig & Co. et al. (New York). Opinion by Howell, G. A.

Protests sustained as to Malines nets. Abstract 24701 (T. D. 31255) followed.

No. 27369.—Horsehair Hats—Horsehair Braids.—Protests, 158271, etc., of Leon Rheims Co. et al. (New York). Opinion by Howell, G. A.

Protests sustained as to horsehair hats and braids. United States *v.* Rheims (175 Fed. Rep., 778; T. D. 30226) followed.

No. 27370.—Protests Overruled.—Protest 511668 of Sinclair, Rooney & Co. (Buffalo), protests 417640–32534, etc., of Theodore Ascher Co. et al. (Chicago), protests 411642, etc., and 437197, etc., of Case & Co. et al., protests 513815, etc., of Frank & Lambert et al., protests 476761, etc., of R. F. Lang et al., and protests 273102, etc., of Wiener Bros. et al. (New York), and protests 493590, etc., of Strawbridge & Clothier et al. (Philadelphia). Opinions by Howell, G. A.

Protests overruled for want of merit.

No. 27371.—Flax and Cotton Fabrics.—Protest 495632 of Henry Glass & Co. (New York). Opinion by Cooper, G. A.

Toweling classified as flax fabrics under paragraph 357, tariff act of 1909, was held dutiable as manufactures in chief value of cotton (par. 332), as claimed by the importers.

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No. 27372.—PROTESTS OVERRULED.—Protests 451575, etc., of Knauth, Nachod & Kuhne (New York). Opinion by Cooper, G. A.

Protests overruled for want of merit.

BEFORE BOARD 3, DECEMBER 12, 1911.

No. 27373.—ARTISTIC ANTIQUITIES.—Protests 527256, etc., of F. L. Roberts & Co. (Boston). Opinion by Waite, G. A.

The protests related to artistic antiquities, the only question having been whether the owner's affidavits in compliance with the regulations for the production of which a bond was given were filed within the time specified in the bond. Protests sustained.

BEFORE BOARD 1, DECEMBER 13, 1911.

No. 27374.—THYMOL.—Protest 425208 of Ungerer & Co. (New York).

Thymol classified as an alcoholic medicinal preparation under paragraph 65, tariff act of 1909, was claimed to be dutiable as a nonalcoholic medicinal preparation under the same paragraph, or as a chemical compound (par. 3).

CHAMBERLAIN, *General Appraiser:* * * * The only question at issue is whether the article is or is not alcoholic. Thymol heretofore has been held by the board to be a chemical compound, Abstract 25954 (T. D. 31720), and in view of the fact that both the "medicinal preparation" paragraph and that for "chemical compounds" contain the same rate of duty, and in view of the fact that the importers in the case at bar make no attempt to dispute the character of the article, the board does not deem it advisable at this time to decide whether the article is a medicinal preparation or chemical compound but to simply find whether it is or is not alcoholic. Based upon the evidence we find the merchandise to be nonalcoholic and sustain the claim at 25 per cent ad valorem under either of the paragraphs mentioned in the protest.

No. 27375.—IMITATION ONYX—IMITATION JET.—Protests 453390, etc., 455168, etc., and 465002 of Albert Lorsch & Co. (New York). Opinions by Chamberlain, G. A.

Protests sustained as to imitation onyx and imitation jet articles. Abstract 26937 (T. D. 31971) and United States *v.* Beierle (1 Ct. Cust. Appls., 457; T. D. 31506) followed.

No. 27376.—GUN-METAL CHAIN.—Protest 486315 of Emrich, King & Schorsch (New York). Opinion by Chamberlain, G. A.

Gun-metal chain in long lengths without bar, swivel, snap, or ring, and valued at more than 30 cents per yard, which was classified as articles of personal adornment under paragraph 448, tariff act of 1909, was held dutiable as manufactures of metal (par. 199). Protest sustained on the authority of G. A. 7129 (T. D. 31089).

No. 27377.—ARTICLES OF PERSONAL ADORNMENT—ARTICLES OF UTILITY.—Protests 503366, etc., of Emrich, King & Schorsch (New York). Opinion by Chamberlain, G. A.

Plated metal puff boxes, gun-metal mesh bags, and chains composed of base metal and imitation jet, which were classified as articles of personal adornment under paragraph 448, tariff act of 1909, were held dutiable as manufactures of metal (par. 199) or paste (par. 109), as claimed by the importers.

No. 27378.—CORN PLASTERS.—Protest 523629 of Park & Tilford (New York). Opinion by Chamberlain, G. A.

Corn plasters classified as manufactures of wool under paragraph 378, tariff act of 1909, were held dutiable as plasters, healing or curative (par. 66). Protest sustained.

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No. 27379.—Cotton Gloves.—Protest 524179 of J. & D. Lehman & Co. (New York). Opinion by Chamberlain, G. A.

Gloves classified as wool wearing apparel under paragraph 382, tariff act of 1909, were found to be composed wholly of cotton and held dutiable as cotton wearing apparel (par. 324). Protest sustained.

No. 27380.—Kippered Herring.—Protests 537621, etc., of Austin, Nichols & Co., protest 516066 of Meyer & Lange, and protests 528566, etc., of Rosenstein Bros. et al. (New York). Opinions by Chamberlain, G. A.

Protests sustained as to kippered herring. United States *v.* Rosenstein (1 Ct. Cust. Appls., 304; T. D. 31357) followed.

No. 27381.—Tetrachloride of Tin.—Protest 524028 of Davies, Turner & Co. (New York). Opinion by Chamberlain, G. A.

Protest sustained as to tetrachloride of tin on the authority of Consolidated Color & Chemical Co. *v.* United States (T. D. 31944).

No. 27382.—Hydroxide of Chrome.—Protest 525984 of Farbenfabriken of Elberfeld Co. (New York). Opinion by Chamberlain, G. A.

Protest sustained as to hydroxide of chrome. United States *v.* Continental Color & Chemical Co. (T. D. 31679) followed.

No. 27383.—Cement.—Protests 526033, etc., of Hensel, Bruckmann & Lorbacher (New York). Opinion by Chamberlain, G. A.

Protests sustained as to cement. Abstract 25974 (T. D. 31727) followed.

No. 27384.—Protests Overruled.—Protests 524565, etc., of F. H. Shallus (Baltimore), protest 525335 of Roessler & Hasslacher Chemical Co. (Newport News), protest 533586 of R. Connor, protests 525073, etc., of A. Klipstein & Co. et al., and protest 524186 of Lehn & Fink (New York), protest 510620 of J. G. Darlington & Co. (Philadelphia), and protests 507159, etc., of C. D. Bunker & Co. et al. (San Francisco). Opinions by Chamberlain, G. A.

Protests overruled for want of merit.

Before Board 3, December 13, 1911.

No. 27385.—Protests Overruled.—Protests 516970, etc., of Amsberger & Son et al. (New York), and protests 460283, etc., of A. Cora et al. (San Francisco). Opinions by Somerville, G. A.

Protests overruled for want of merit.

No. 27386.—Blanco—Rehearing—Redecision.—Protest 497613 of J. Rothschild & Co. (San Francisco).

Hay, *General Appraiser:* The order heretofore made dated August 21, 1911, Abstract 26442 (T. D. 31842), denying a rehearing in the above-entitled case is hereby set aside and annulled and a rehearing in said case is hereby granted.

It appearing also to the satisfaction of the board, from an examination of the record and the papers filed therewith, that the protest should have been sustained, the same is hereby sustained and the collector directed to reliquidate the entry assessing duty on the blanco in question under paragraph 7 of the tariff act of 1909.

No. 27387.—Silex Lining—Flint Stones.—Protest 516337 of Hawley & Letzerich (Galveston). Opinion by Hay, G. A.

Protest sustained as to silex lining on the authority of Abstract 26146 (T. D. 31774).

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No. 27388.—Straw Bottle Covers—Rehearing—Redecision.—Protest 508233 of La Manna, Azema & Farnan (New York).

Hay, *General Appraiser:* Motion for rehearing made by the attorneys for the protestants in this case is hereby granted. Following Reisinger's case, G. A. 3836 (T. D. 17961), the protest, which claims that certain straw bottle covers are usual coverings and therefore not dutiable under paragraph 463 as assessed, is sustained, and the collector directed to reliquidate the entry accordingly.

No. 27389.—Protests Overruled.—Protest 432977 of Robert B. Ways (Baltimore), protest 517670 of American Express Co., protests 517380, etc., of George Borgfeldt & Co., and protests 523915, etc., of Charles B. Perkins Co. et al. (Boston), protest 491109 of H. J. Carson (Buffalo), protest 402445–31385 of Carson, Pirie, Scott & Co., and protest 518064–38376 of Gallagher & Ascher (Chicago), protest 523951 of Brooke, Bond & Co. (Minneapolis), protest 559531 of American Express Co., protests 109022, etc., of H. B. Claflin Co. et al., protest 521084 of A. J. Dale, and protests 523706, etc., of C. Weinacht (New York), protest 485178 of J. R. Headrick (Port Townsend), and protest 516355 of Butler Bros., protest 520962 of J. J. Downes, protests 491099, etc., of Ella J. Fuller et al., protest 496004 of H. Heil Chemical Co., and protest 486278 of W. Schade & Co. (St. Louis). Opinions by Hay, G. A.

Protests overruled for want of merit.

No. 27390.—Protests Abandoned.—Protest 525258 of George Borgfeldt & Co. (Baltimore), protests 536441, etc., of Estabrook & Eaton et al. (Boston), protest 516333 of Joseph R. Peebles Sons Co. (Cincinnati), protests 509039, etc., of Alexander Murphy & Co. et al. (Philadelphia), protests 509049, etc., of B. Roy Anderson & Co. (Port Townsend), and protests 516358, etc., of John H. Boden & Co. et al. (San Francisco).

Protests abandoned.

Before Board 2, December 14, 1911.

No. 27391.—Gelatin Prints—Post Cards.—Protest 355578 of H. Hagemeister Co. (New York). Opinion by Fischer, G. A.

Protest sustained as to gelatin prints on the authority of Rotograph *v.* United States (1 Ct. Cust. Appls., 82; T. D. 31106).

No. 27392.—Coverings of Specific-Duty Goods.—Protest 528337 of R. F. Downing & Co. (New York). Opinion by Fischer, G. A.

Paper, cardboard, and pasteboard wrappings or containers of merchandise subject to specific duty were held nondutiable, as claimed by the importers. United States *v.* Matagrin (1 Ct. Cust. Appls., 309; T. D. 31406) followed.

No. 27393.—Sewing Machines.—Protest 527769 of Singer Manufacturing Co. (New York). Opinion by Fischer, G. A.

Protest sustained as to machines used for sewing leather gloves. G. A. 7225 (T. D. 31623) followed.

No. 27394.—Cork Floats.—Protests 427364, etc., of Enterprise Manufacturing Co. (Cleveland). Opinion by Fischer, G. A.

Protests sustained as to cork floats on the authority of Fenton *v.* United States (1 Ct. Cust. Appls., 529; T. D. 31546).

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No. 27395.—Protests Overruled.—Protest 389081-30775 of Charles D. Stone & Co. (Chicago), protest 527292 of American Button Works, and protests 528545, etc., of William Mills & Sons (New York), and protests 462108, etc., of Chicago Junk Co. (Port Townsend). Opinions by Fischer, G. A.

Protests overruled for want of merit.

No. 27396.—Elastic Belts—Elastic Webbing.—Protests 273132, etc., of Guthman, Solomons & Co. et al. (New York). Opinion by Howell, G. A.

Protests sustained as to elastic belts on the authority of G. A. 7052 (T. D. 30730). A further claim was sustained that merchandise classified as silk wearing apparel under paragraph 390, tariff act of 1897, was dutiable as silk webbing (par. 389).

No. 27397.—Powder Puffs—Silk Handerkchiefs.—Protest 452597-35175 of Sears, Roebuck & Co. (Chicago).

Howell, *General Appraiser:* In this case the appraiser reports that the merchandise consists of a "hemstitched silk handkerchief having a small powder puff fastened in the center," silk being the component material of chief value. Duty was assessed thereon by the collector as hemstitched silk handkerchiefs at the rate of 60 per cent ad valorem, under the provisions of paragraph 400, tariff act of 1909. The importers claim that the merchandise is properly dutiable as a manufacture in chief value of silk at the rate of 50 per cent ad valorem under paragraph 403 of said act.

The official sample before us consists of a hemstitched piece of silk measuring about 9 inches square, in the center of which a circular piece of silk or other material is applied by a double row of stitching through which runs a draw cord or string. To the circular piece of silk is attached a disk of down, which is intended to be used as a powder puff. After using the puff the down may be concealed from view by the use of the draw cord or string.

The article in its present condition is not suitable for use as a handkerchief. It is clearly intended to be used as a powder puff for applying powder to the face and neck. There is no denominative provision for powder puffs in the present tariff act, and as the articles are admittedly in chief value of silk, we hold that they are properly dutiable as manufactures of silk at the rate of 50 per cent ad valorem under paragraph 403 of said act.

The protest is sustained and the entry will be reliquidated accordingly.

No. 27398.—Protests Overruled.—Protests 505422-37281, etc., of Bernard, Judae & Co. et al. (Chicago), and protests 504851, etc., of A. Bader Co. et al., protest 492372 of Fleitmann & Co., and protests 510246, etc., of L. Littauer et al. (New York). Opinions by Howell, G. A.

Protests overruled for want of merit.

No. 27399.—Protests Overruled.—Protests 525334, etc., of Brown-Durrell Co. et al. (Boston), protests 506246-37965, etc., of Carson, Pirie, Scott & Co. et al., protests 518017-38701, etc., of John V. Farwell Co. et al., and protests 518026-38721, etc., of Marshall Field & Co. (Chicago), protests 521664, etc., of Sell Horse Goods Co. (Cleveland), protests 196104, etc., of William Simpson (New York), and protest 120358 of John Wanamaker (Philadelphia). Opinions by Cooper, G. A.

Protests overruled for want of merit.

Before Board 3, December 14, 1911.

No. 27400.—Black Olives.—Protest 380837 of G. P. Calogera (New York). Opinion by Waite, G. A.

Protest sustained as to black olives imported under the act of 1897. United States *v.* Zucca (175 Fed. Rep., 578; T. D. 30147) followed.

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No. 27401.—PROTESTS OVERRULED.—Protests 519397, etc., of F. F. Noll & Co. et al. (Newark), and protest 475199 of S. & G. Gump Co. (San Francisco). Opinions by Waite, G. A.

Protests overruled for want of merit.

No. 27402.—PROTESTS DISMISSED.—Protest 576006 of J. A. Medina & Co. (New York).

Protest dismissed upon stipulation.

BEFORE BOARD 3, DECEMBER 15, 1911.

No. 27403.—COMMISSIONS.—Protests 213705, etc., of George J. Bauer et al., protests 11402h, etc., of N. Erlanger, Blumgart & Co., protests 9904h, etc., of J. M. Frank & Lang et al., protests 14272h, etc., of Milius, Guggenheimer & Co. et al., protests 14224h, etc., of Rothfeld, Stern & Co., protests 10210h, etc., of Stern, Brauer & Co. et al., and protests 359704, etc., of Arthur Walker & Co. et al. (New York). Opinions by Waite, G. A.

Protests sustained as to commissions on the authority of Stein *v.* United States (1 Ct. Cust. Appls., 36; T. D. 31007; and 1 Ct. Cust. Appls., 478; T. D. 31525).

TREASURY DEPARTMENT, *December 19, 1911.*

The appended court decision is published for the information of collectors of customs and others concerned.

JAMES F. CURTIS, *Assistant Secretary.*

(T. D. 32090.)

Artificial horsehair.

UNITED STATES *v.* ECKSTEIN.

United States Supreme Court. No. 52 (suit 4335). December 4, 1911.

1. SIMILITUDE—IDENTITY.

The similitude clause, section 7, tariff act of 1897, does not require identity.

2. SAME.

A substantial similitude in any one of the four particulars, material, quality, texture, and use, enumerated in section 7, tariff act of 1897, is sufficient to satisfy the requirements of said section.

3. ARTIFICIAL HORSEHAIR—COTTON YARN.

Artificial horsehair is a yarn, and being composed of the same constituents in approximately the same proportions as cotton, and being used interchangeably with polished cotton yarn for making hat braids, it is similar in material and use to cotton yarn, and dutiable as such under paragraph 302, tariff of act of 1897.

ON WRIT of certiorari to the United States Circuit Court of Appeals for the Second Circuit.

[Decision adverse to the Government.]

The decision below (167 Fed. Rep., 802; T. D. 29504) reversed a decision by the Circuit Court, Southern District of New York (160 Fed. Rep., 287; T. D. 28860), affirming a decision by the Board of United States General Appraisers, G. A. 6387 (T. D. 27442), which had reversed the assessment of duty by the collector of customs at the

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port of New York and sustained the importer's alternative claim on merchandise imported by Albert Eckstein.

Wm. L. Wemple, Assistant Attorney General (*Martin T. Baldwin*, special attorney, on the brief), for the United States.

Wade H. Ellis (*John A. Kratz, jr.*, on the brief) for the importer.

Mr. Chief Justice WHITE delivered the opinion of the court:

This suit concerns the correct classification, under the tariff act of June 24, 1897, of artificial or imitation horsehair, imported by the respondent into the port of New York on October 5, 1904.

Artificial or imitation horsehair is made from cotton waste by two processes, the Fremery and the Chardonnet. By the first process, referred to in the opinion of the Circuit Court of Appeals for the Second Circuit in Hardt von Bernuth *v.* United States (146 Fed. Rep., 61; T. D. 27028), the cotton waste is dissolved in a solution of cupammonium, a salt of copper and ammonia, and this solution is forced through fine openings, discharging into a bath of acetic acid, forming threads of cellulose. By the second process the cotton waste, or raw cotton, is at first turned into gun cotton. This gun cotton is then mixed with alcohol and ether, and dissolved into a liquid, and this liquid is forced by pressure through pipes, at the end of which there are a number of small openings. The material is subsequently subjected to a process which it is not necessary to describe.

In the manufacture under both processes the single filaments are not allowed to solidify, although they are made to stick together, whereas in the manufacture by the like process of artificial silk the fine filaments are grouped and twisted together and solidified. The imitation horsehair is usually dyed black, imported in skeins and sometimes on spools.

Imitation horsehair is not expressly mentioned in the tariff act of 1897, probably because it was not commercially known when the act was passed.

The provisions of the act of 1897 which are required to be considered in the determination of the question to be decided, briefly, are these, viz: Section 6, providing for duty on nonenumerated articles; section 7, the "similitude clause;" paragraph 302, the cotton-yarn clause; and paragraph 385, the silk-yarn clause.

The goods were classified by the collector at the port of New York as "similar" to silk yarn, and reference was made to prior decisions, viz, G. A. 4939 (T. D. 23110), G. A. 5081 (T. D. 23528), and G. A. 5257 (T. D. 24155). Duty was collected at the rate of 30 per cent ad valorem under paragraph 385, the silk-yarn provision, as a result of applying section 7 of the "similitude clause." The importer protested, claiming the merchandise to be dutiable at the rate provided by paragraph 302, by similitude to cotton yarn, or at the rate of 20 per cent under section 6, as a nonenumerated manufactured article.

Before the Board of General Appraisers testimony was seemingly directed on the part of the importers to establishing that the material was, and on the part of the Government that it was not, a yarn. On June 22, 1906, the board reversed the action of the collector and sustained the alternative claim of the importers that the merchandise was dutiable as a nonenumerated manufactured article under section 6. G. A. 6387 (T. D. 27442). It is worthy of remark, however, that pending the hearing before the board the Secretary of the Treasury, in Treasury Decision 27350, May 15, 1906, directed collectors of customs that duty should be assessed on imitation horsehair as a nonenumerated manufactured article at the rate of 20 per cent ad valorem under section 6.

By appropriate proceedings Eckstein, the respondent here, invoked the exercise of jurisdiction by the Circuit Court for the Southern District of New York for the review of questions of law and fact involved in the decision of the Board of General Appraisers, and in that court contended that the merchandise was a yarn and was

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by similitude dutiable under paragraph 302 as a cotton yarn. The court, after hearing additional testimony, decided that the merchandise was not yarn, *could not* by similitude be assessed as cotton yarn or yarn of any other kind, and that the board properly assessed it under section 6 as a manufactured article not otherwise provided for. Eckstein *v.* United States (160 Fed. Rep., 287; T. D. 28860).

The Circuit Court of Appeals reversed the judgment and held that the merchandise should be classified under section 7 of the act as a nonenumerated article similar to cotton yarn, and the duty should be assessed under the paragraph (302) relating to cotton yarn. Referring to its prevous opinion in the Bernuth case, already referred to, wherein it was held that artificial silk, which, as we have already said, is made by similar processes, should be so classified, the court said:

> The judge of the Circuit Court affirmed the Government's classification, distinguishing that case on the ground that artificial silk was found to be a yarn, whereas artificial horsehair, being solid, and not composed of twisted or spun filaments, is not a yarn. Admitting that this is so, still artificial horsehair is like cotton yarn in material, each being composed almost entirely of cellulose, and like it in use, being largely used as glazed cotton is in making hat braids, shoe laces, binding, braids, tapes, and imitation horsehair. We think these resemblances establish its similitude to cotton yarn, even if the texture of the two articles is different.

This writ of certiorari was theruepon allowed.

The question is simply this: Did the Circuit Court of Appeals properly classify the merchandise?

The portion of section 7, the similitude clause of the act of 1897, with which we are concerned, is as follows:

> SEC. 7. That each and every imported article, not enumerated in this act, which is similar, either in material, quality, texture, or the use to which it may be applied to any article enumerated in this act as chargeable with duty, shall pay the same rate of duty which is levied on the enumerated article which it most resembles in any of the particulars before mentioned. * * *

In the brief for the Government it is said: "It is well established that the requirements of the similitude clause of section 7 are satisfied if there be shown a proper similarity in any one of the four particulars, material, quality, texture, or use," enumerated in the section. Arthur *v.* Fox (108 U. S., 125).

As said by the Circuit Court of Appeals for the Second Circuit, in United States *v.* Roessler (137 Fed. Rep., 770; T. D. 26127):

> It must be borne in mind that the statute does not require identity; if that were necessary the statute would have no *raison d'être.*

The decision of the Board of General Appraisers and of the Circuit Court were placed upon the ground that the merchandise produced by a chemical process was not structurally a yarn such as is produced by the mechanical process of spinning. It was not, by either the board or the court, found that there was no substantial similarity to cotton yarn in material or use. We think the evidence justifies the contention of counsel for the importer that commercially the merchandise is a yarn. As we have before said, the Government originally contended that it was a yarn, and it is reflex significance that in the tariff act of 1909 special provision is made for these things in paragraph 405, as for "yarns, threads, filaments of artificial or imitation silk, or of artificial or imitation horsehair, by whatever name known, and by whatever process made." But assuming, for argument sake, as did the Circuit Court of Appeals, that the merchandise is not a yarn, let us consider, even if the texture of the articles be different, whether it was correctly held that the similitude to cotton yarn was established because—

> artificial horsehair is like cotton yarn in material, each being composed entirely of cellulose, and like it, in use being largely used as glazed cotton is, in making hat braids, shoe laces, binding braids, tapes, and imitation horsehair.

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As to material: Respondent does not claim similarity between the merchandise in question and cotton because cellulose is found in each; the contention is that there is similarity in material because the proportion of the ingredients—cellulose, water, etc.—is the same in the merchandise in question as the proportion of the same ingredients in cotton. Counsel say, and the contention is, we think, supported by the evidence:

The goods are made of cotton fibers. Cotton consists of pure cellulose with a small percentage of hydroscopic water. The merchandise in suit is pure cellulose with a small percentage of hydroscopic water. It differs only from the cotton fiber in that the cell structure has been broken down. Other than this, cotton and the merchandise in suit are identical in material. No element is found in cotton which is not present in this merchandise; no element is in this merchandise which is not found in cotton, and the proportion of elements in both is approximately the same.

As to use: Paragraph 302 of the act covers cotton yarns regardless of their use. Thus, yarns have four broad, general uses, viz: Knitting, weaving, sewing, and braiding, and manifestly a given cotton yarn could not be used for all the purposes of all cotton yarns. In the group of hard-twisted yarns is found cotton yarn, used in the production of hat braids, and in the same commercial group appears the merchandise in suit. One of the many varieties of cotton yarn used in making hat braids is what is known as glazed or polished cotton yarn. It is asserted and not denied that such merchandise has been uniformly classified for customs purposes as a cotton yarn, and, so far from being a highly specialized and unusual commodity, it has been an important article of commerce for at least 30 years. However, while imitation horsehair is generally used in the production of hat braids and is used interchangeably with glazed cotton yarn for such purpose, it has, in common with cotton yarns, other uses, which are referred to in the opinion of the Circuit Court of Appeals.

Upon the whole, we are of opinion that both as to material and use there is a substantial statutory similitude between cotton yarns enumerated in paragraph 302 and the merchandise in question, both as to material and use. As the requirement of the statute is not that there shall be similarity in all of the four particulars enumerated in section 7, but a substantial similarity in one of those particulars may be adequate, the classification adopted by the Circuit Court of Appeals was proper, and its judgment is therefore affirmed.

(T. D. 32091.)

Wools—Reappraisement.

OELRICHS & CO. *v.* UNITED STATES (No. 57).

1. JURISDICTION.

The importer himself having invoked a decision by the General Appraiser and later by the reappraisement board, bringing both the subject matter and the parties there, can not be heard to contend the board was without jurisdiction to reappraise the goods.

2. MANDATORY PROVISIONS OF SECTIONS 2901 AND 2939, REVISED STATUTES.

Though there may have been a failure on the part of the collector strictly to comply with the provisions of sections 2901 and 2939, Revised Statutes, governing the special designation of merchandise for examination and appraisement, nevertheless the Board of General Appraisers would be in duty bound, the goods in question remaining subject to their control and open to their inspection and examination, to resort, on appeal, to the best means at hand for making an appraisement; and though it should appear that one package in ten was not in some instances examined by the board, there being sufficient samples of the merchandise before them and these having been examined, there would be accordingly such a substitute process as the law contemplates and permits.

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3. QUESTIONS OF FACT NOT RETRIED BY CLASSIFICATION BOARD.

It is not the province of a classification board to retry questions of fact determined by a board of reappraisement, and additional testimony offered before the classification board was properly excluded.—Gulbenkian & Co. *v.* United States (153 Fed. Rep., 858) distinguished.

4. EVIDENCE NOT FORMALLY OFFERED AND NOT OBJECTED TO.

The Government having tendered evidence, with the promise to support it with additional testimony to make it relevant, but failing in this, and there being no motion to exclude it, the action of the board in taking the testimony originally can not be urged to vitiate the board's finding in the case.

United States Court of Customs Appeals, December 6, 1911.

TRANSFERRED from United States Circuit Court for Southern District of New York, Abstract 19797 (T. D. 29306).

[Decision affirmed.]

Comstock & Washburn for appellants.

Wm. L. Wemple, Assistant Attorney General, and *Wm. K. Payne*, Deputy Assistant Attorney General, for the United States.

Before MONTGOMERY, SMITH, BARBER, and MARTIN, Judges.

MONTGOMERY, Presiding Judge, delivered the opinion of the court:

This case has been transferred from the Circuit Court for the Southern District of New York. It is an appeal from a decision of Board 3 of General Appraisers overruling a protest which attacked the validity of an appraisement and reappraisement of certain wool imported from Russia. The wool in question was known as "Georgian autumns." It consisted of lamb's wool, white sheep's wool, and colored sheep's wool, separately packed and sorted and invoiced at separate values. The white wool was advanced in value by the appraiser to over 12 cents per pound, thereby increasing the duty from 4 to 7 cents per pound. This advance in value was sustained on reappraisement by General Appraiser Lunt, and on appeal to Board 2 to re-reappraisement the action of General Appraiser Lunt was sustained. This proceeding followed.

On such an appeal the questions presented are narrow, as has been frequently adjudicated. All that is open for review is the question of whether the board acted within its jurisdiction. If it did, its decision is final and conclusive, and all other tribunals are bound to respect it.

It is claimed that this reappraisement is invalid for the reason that the provisions of sections 2901 and 2939, Revised Statutes, requiring the collector to designate at least one package of every invoice and 1 package in 10 of merchandise imported, and a greater number if it should be deemed necessary, to be opened, examined, and appraised, was not complied with by the local appraiser, and that there were not before Board 2 the originals or samples of this number of bales which had been designated and sent to the public stores for examination.

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The meritorious question presented is whether upon the failure of the collector to comply strictly with the provisions of sections 2901 and 2939, and on appeal for reappraisement to the Board of General Appraisers, such board is bound to set aside the appraisement and permit the entry of the goods at invoice value, or whether such board still has the duty of making an appraisement, resorting to the best means at hand, so long as the goods are subject to their control and open to inspection and examination.

This question had some consideration in the case of Tilge *v.* United States (T. D. 31676). In that case it was said:

> Under section 2899 of the Revised Statutes it is made the duty of the importer to hold this merchandise, available for examination in a manner therein and in his bond prescribed, until 10 days after final appraisement, or to compensate the Government under his bond for not so doing. When, therefore, by an appeal the General Appraiser, and in turn the Board of General Appraisers, are given jurisdiction of an appraisement, the record advises them of the precise subject matter thereof, what packages are in public stores or otherwhere subject to their order and examination and any goods not therein the subject of appeal, and the goods therein not the subject of an appeal and therefore unnecessary of examination. From this record he or they can determine precisely if samples will suffice for examination, and if so, what samples, and what of the goods may on application be released, and each is fully empowered to consent thereto. If examination of these samples duly selected and preserved is by him and the Board of General Appraisers deemed sufficient, that concludes the matter.

It was further said in the opinion:

> The statement in the petition "that samples duly authenticated may be substituted for the public-store cases in reappraisement hearings seems to have been the opinion of the courts in various cases," is precisely in line with the holding of this court in the Tilge case; but the samples must be "duly authenticated." They must be authenticated by being selected from the importation and approved by the appraising officer having jurisdiction of the case and delivered by the importer in this country, who is under bond to so deliver them whenever duly demanded.

Some confusion may arise from the statement that the examination of 1 package in 10 contemplated by section 2901 is jurisdictional. It is undoubtedly true that these provisions are mandatory and for the benefit of the importer as well as of the Government. But does it follow that the failure to observe this mandatory provision shall for all time result in perpetuating an injustice to the Government and prevent an advance from the invoice value where the remedy of the importer which he seeks is an appeal to a general appraiser or to a board of reappraisement, thereby invoking the jurisdiction of an officer or body authorized by law to make reappraisement of importations? It would seem on principle that the importer, having thus invoked the jurisdiction of the general appraiser and later the reappraisement board, ought not to be heard to say that the board could not perform that function. It is not meant to say that in a case where it transpires after an appeal for reappraisement that there is no method by which the board can make a reappraisement based

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upon examination of the goods in public stores or any substitute process which would be its equivalent, the importer may not raise this question. But where, as in the present case, the board had the opportunity to and did inform itself by an examination of the goods the subject of the appeal or of selecting samples thereof if they chose from the body of the importation, it would seem that no injustice is done in permitting the board to act upon the information thus obtained.

It is said that the board never acquired jurisdiction of the subject matter in this instance. We do not agree with this contention, and we think counsel for the importer mistakes the holding of the court in Tilge *v.* United States, *supra.* The subject matter of this appeal is the reappraisement of the goods covered by this appeal. There can be no doubt that under the law and upon the importer's own appeal Board 2 acquired jurisdiction of this subject matter. It would not do for the importer to say that it did not at the same time acquire jurisdiction of the parties, for the importer was himself the party that invoked the jurisdiction. Having jurisdiction of the subject matter and of the parties, that jurisdiction may be lost if the board proceeds upon a wrong principle in reaching its conclusion. Such is not, however, this case. It is true that it does not appear that 1 package in 10 was examined by the board in some instances. But it does appear that the board had the opportunity to examine such samples as they saw fit to draw—in fact, drew such samples—from the importation, and, finally, it appears by the testimony of General Appraiser Howell that after taking the evidence in the reappraisement case General Appraiser Howell, in company with the importer and his attorney, drew additional samples, to which no objection was taken. The classification board found as a fact that the evidence clearly shows that the board had before it ample and sufficient samples of all the merchandise under reappraisement. We think, in view of this finding, that the substitute procedure which the law admits, as intimated in Tilge *v.* United States, *supra,* was followed, and that there was no want of jurisdiction. If there was an error on the part of the local appraisers by failure to examine 1 in 10 of the packages, we agree that the rule laid down in Burgess *v.* Converse (4 Fed. Cas., 726), that if the importer demands a reappraisement, and that reappraisement is regular, he waives all objections to the action of the local appraiser. See also Beer *v.* United States (1 Ct. Cust. Appls., 484; T. D. 31526).

It is next claimed that the reappraisement board proceeded upon the wrong principle and contrary to the law in not following and regarding the case of Gulbenkian & Co. *v.* United States (153 Fed. Rep., 858) as controlling. It was sought to show before the classification board that it has been the uniform custom in the principal

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markets of the country whence the goods were imported to buy and sell goods like these in question, colored and whites mixed, at one and the same price, and it was claimed that under these conditions the customs officials, including the three general appraisers, erred and acted unlawfully in appraising the wool separately. It is claimed that the Georgian autumns, colored and whites mixed, should have been inventoried at one and the same price. This testimony was excluded by the classification board, and properly so. It is not the province of the classification board to retry the question of fact determined by the board of reappraisement. This was held by this court in Wolff *v.* United States (1 Ct. Cust. Appls., 181; T. D. 31217) and reaffirmed in Briggs *v.* United States (1 Ct. Cust. Appls., 408; T. D. 31482). That this testimony was an effort to retry that question is obvious. But more than this, the goods were separately invoiced, and there was sufficient before Board 2 to indicate that they were purchased at separate prices. The real contest appears to have been whether the goods were properly graded by the invoice.

The importer himself did not pursue the course indicated in the Gulbenkian case, *supra*. In that case the wools were all invoiced at the same price, and evidence was introduced before the classification board showing conclusively that, according to the uniform custom, the wools were sold at a single price in the country of production. That fact is not established in the present case.

It should be stated that the testimony offered in the Gulbenkian case, *supra*, appears not to have been supplemental testimony, simply making weight for the importer, but the only testimony bearing upon the question of the custom in selling wools in the country of exportation, which was shown by the conclusive testimony to be the method claimed by the importer, as it would appear from the opinion of Judge Coxe that the record was destitute of any evidence that the wool was bought and sold in the country of exportation in any other way than as claimed by the importer.

In the present case there was abundant testimony before Board 2 tending to show that the goods were sold as claimed by the Government.

Before the reappraisement board affidavits of three Marseille merchants were offered to the effect that certain samples of wool submitted to them were of the B O and B O O character; that is, of a grade higher than that fixed by the importer in his invoice. Complaint is now made that this testimony was improperly admitted by the board of reappraisement. When these affidavits were offered, they were accompanied by the statement:

The first I offer as an exhibit is the Government's Exhibit 1, sample of wool said to be representative B wool from all of the invoices on hearing, subject to objection of course. Of course, if it proves that it is not a proper subject I offer it for what it is worth.

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Importer's counsel then said:

I presume it will be a matter of proof afterwards?

To which counsel for the Government replied:

Oh, yes; I have got to establish that. Also I have to establish that that is a fair sample. I expect to do that.

Later Mr. Wakefield, attorney for the Government, testified:

I further testify that the sample of wool sent to Marseille was received by me from Mr. Seavers and delivered to Special Agent Clayton to be transported to Marseille, and that I received the sample by mail from the department on its return, and that during the time it was in my hands it underwent no change whatsoever.

By Mr. WASHBURN. You know that Special Agent Clayton is in the city, don't you?—A. He called me up on the phone yesterday. I tried to get him here. He delivered the sample to the special agent in Paris.

Mr. WAKEFIELD. If there is any objection to the validity of that sample, or that it was not properly connected, I don't think it possible to connect it by competent legal evidence, and I would request the board to forward a representative sample of the B wool to Marseille directed to these brokers, with the request for a statement. That is the only way we can get competent strict evidence.

Mr. WASHBURN. I object to that. I shall decline to admit that it has been shown that Exhibit 7 is a competent sample.

It was contended before the classification board that the admission of these affidavits was error sufficient to oust the appraisement board of jurisdiction. Assuming that this is all that appeared in the case, it is not to be assumed that the board considered these affidavits as establishing any fact made the subject of controversy, particularly as it was conceded by the Government's attorney that he had not made proof showing that the samples attached were like the samples of wool actually adopted. The samples were returned with the affidavits, and were before the board, and it is not impossible that they by examination could determine that these samples corresponded with the samples of wool which they had determined was the character of the importation. It is not claimed by the Government that the samples were shown by the evidence to be correct samples, but it is claimed that by comparison with the other samples of wool which the board has before them they may have been able to determine that such was its quality.

There was no motion to strike out this evidence for the very adequate reason that the attorney for the Government did not *claim* that he had established sufficiently the fact that the sample was taken from the goods. It would be an anomaly to hold that testimony having been received before the board of appraisement without objection, no motion having subsequently been made to strike it out, the action of the board in receiving this testimony could on review be held error and the entire proceeding vitiated because of such action, when the attention of the board had not been challenged to any such view of the case on the reappraisement proceeding. This testimony was, so far as the objection now urged by counsel goes,

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competent for the purpose of showing that wool of the character shown by the samples attached to the affidavits was B O or B O O wool. If there was any error it was in failing to supplement the proof by showing that the samples attached to the affidavits corresponded with the wool in question in this importation, and, as indicated above, a comparison of the wool shown to be the subject of importation with the samples would enable the board to form some judgment upon that question.

The question of whether they gave improper weight to any of the evidence before them is not the subject of review by the board of classification or this court. Wolff *v.* United States (1 Ct. Cust. Appls., 181); Beer *v.* United States (1 Ct. Cust. Appls., 484).

We do not discuss the rulings upon evidence offered for the purpose of showing that this proceeding was an open hearing, as we have treated it in our discussion as an open hearing.

We find no error in the ruling of the classification board, and their decision is *affirmed.*

DE VRIES, Judge, did not sit in this case.

(T. D. 32092.)

Needle cases—Needle books.

STEINHARDT & BRO. *v.* UNITED STATES (No. 536.)

NEEDLE BOOKS, CONTAINING NEEDLES, AND THE LIKE.

Needle books, containing needles, and the like articles are not dutiable as manufactures in chief value of metal. Paragraph 164, tariff act of 1909, singles them out and establishes a rule for the determination of their dutiable status, and that is according to the chief components included within and going to make up the entirety. The importations were dutiable as nonenumerated manufactured articles under the provisions of paragraph 480, tariff act of 1909.—Hartranft *v.* Sheppard (125 U. S., 337).

United States Court of Customs Appeals, December 6, 1911.

APPEAL from Board of United States General Appraisers, G. A. 7119 (T. D. 31026).

[Decision reversed.]

Comstock & Washburn (*Albert H. Washburn* and *Geo. J. Puckhafer* of counsel) for appellants.

Wm. L. Wemple, Assistant Attorney General (*Charles E. McNabb* on the brief), for the United States.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

DE VRIES, Judge, delivered the opinion of the court:

This appeal involves the construction of the final clause of paragraph 164 of the tariff act of 1909, which reads:

164. * * * Needle cases or needle books furnished with assortments of needles or combinations of needles and other articles, shall pay duty as entireties according to the component material of chief value therein.

The merchandise consisted of needle books of hand sewing and darning needles, bodkins, scissors, and buttonhooks. The books

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are made up of paper, designed and adapted for holding needles. The storing of the needles therein appears to be a matter of some skill, as they are arranged in a definite order according to sizes and numbers. They were assessed for duty by the collector under paragraphs 199, 420, and 452 of that act, according as these paragraphs were applicable in the view taken by the collector.

The only claim asserted by the importer, appellant, necessary of consideration in our view of the case, is that the goods are included within the terms of paragraph 633 of said act, for "needles, hand sewing and darning," and therefore dutiable as nonenumerated manufactured articles under paragraph 480 of the act.

It was admitted at the hearing that the chief value of the merchandise resided in the needles, and the appeal was expressly limited by the appellant to the cases containing only hand-sewing needles. The subject matter of decision, therefore, is an entirety, consisting of needle cases filled with hand sewing needles, the cases being made entirely of paper and the needles of steel, and as between the two, the chief component material of value being the needles.

The Government contends, and the board held, that the merchandise is properly dutiable as manufactures in chief value of metal. The appellant contends that under the peculiar language of paragraph 164 the merchandise is not so dutiable, because the component material of chief value of the entireties is hand sewing needles, which are precisely within the provisions of paragraph 633 of the free list, and not otherwise provided for in the act.

The exact distinction contended for is that needles are a separate tariff entity from the metal of which they are made, so denominated in paragraph 633, and so expressly assigned for duty under the proviso under consideration. Paragraph 480 in terms confines "component material of chief value" to each *single* component *material*. This *proviso* carves out an exception to that rule and provides for the ascertainment of duty according to a component material of chief value consisting of "articles" made up of several single component materials.

The dutiable classification of needle cases filled with needles has been the subject of extended litigation and conflicting decisions. See Wanamaker *v.* Cooper (69 Fed. Rep., 465), United States *v.* Mathews (78 Fed. Rep., 345), Guthman *v.* United States (148 Fed. Rep., 332; T. D. 27501), Dieckerhoff *v.* United States (151 Fed. Rep., 957; T. D. 27949), United States *v.* Dieckerhoff (160 Fed. Rep., 449; T. D. 28716).

The decision in this case depends entirely upon the construction to be given the phrase "as entireties according to the component material of chief value therein." The philosophy of the board applicable to the case is expressed as follows:

> That it is necessary to draw a line between component *parts* as distinguished from component *materials* appears to us to be unquestioned.

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While the reasoning of the board, as applied to the general provisions of paragraph 481 of the tariff act of 1909 for the ascertainment of the component material of chief value of manufactured articles is without question, we do not consider that it is applicable to the case at bar. The cases cited by the learned general appraisers, and the instances, subject of comment, relating to manufactured articles in exposition of the rule of ascertainment of component material of chief value and applied by the board in this case, is expressly by statute confined to articles, and not to entireties made up of articles, and relates to the component material of chief value of such articles, the same having been manufactured. Not relying upon this provision in instances of needle cases, and obviously intending a different rule, the Congress has singled out such and laid down a special rule for the determination of dutiable value to be ascertained according to the chief component article included within and going to make up the entirety.

Under the rules of grammatical and legal reference the words "component material of chief value therein," as used in the provision of paragraph 164, are referable to the word "entireties" preceding. The statute speaks in this case of the chief component material of an *entirety*, and not the chief component material of an *article* or *manufacture*. The courts, notably in United States *v.* Dieckerhoff (160 Fed. Rep., 449), had held that needle cases filled with needles could not be spoken of as articles composed wholly or in part of metal. The court said, speaking through Judge Lacombe:

> The case itself is composed of paper, and the suggestion that, when needles are stored in it, it becomes an article composed in part of metal, seems about as reasonable as would be the proposition that a square pasteboard box becomes an article composed in part of rubber when it is filled with rubber bands.

The component materials which were immediately assembled in the making up of this entirety, the merchandise in its assembled and imported condition, which the statute denominates an entirety, was made of needles and books of paper. In the specific instance the statute makes an article a component material of an entirety. The component materials, therefore, *of these entireties* are needles and books of paper. If, therefore, the needles are the component material of chief value, the entirety is dutiable according as the needles therein are dutiable. In this instance such needles are free *eo nomine*. Were the books of paper the component material of chief value in the entirety the articles would be dutiable in the manner such books of papers are made dutiable under the tariff laws.

There is, in the opinion of the court, nothing unreasonable or impossible of administration in this conclusion, and there is nothing in the instances suggested in the opinion of the board that militates against this statement or renders administration of the customs laws hereunder either impossible or unreasonable.

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Congress having specifically provided in this instance that the dutiable integers should be a component material consisting of an article of manufacture, the reasoning in and conclusion of this case does not carry it beyond the language employed by the Congress.

The chief component article, hand sewing needles, which is the chief component material of the entirety in this case, being specifically provided for in the free list, paragraph 633, the case is controlled in principle by Hartranft *v.* Sheppard (125 U. S., 337). The subject of that decision was quilts composed of cotton and eider down or silk and eider down, the eider down in each case being the component material of chief value. The court said:

> Quilts are nonenumerated manufactured articles, composed of two or more materials. Eider down is on the free list. * * * As eider down is the component material of chief value in the quilts involved in this suit and that is free, it follows that they are manufactured articles not provided for, and therefore chargeable with the duty of 20 per cent ad valorem under section 2513 rather than 35 per cent as a manufacture of cotton or 50 per cent as a manufacture of which silk is the component material of chief value.

Dieckerhoff *v.* United States (T. D. 27949; 151 Fed. Rep., 957).

The merchandise is properly dutiable, therefore, as a nonenumerated manufactured article under the provisions of said paragraph 480.

For the reasons herein stated we think the Board of General Appraisers erred, and the decision of the board should be *reversed.*

(T. D. 32093.)

Rag pulp.

DOWNING & CO. *v.* UNITED STATES (No. 594).

PULP IN SHEETS MADE FROM COTTON OR LINEN RAGS.

Previous to the present enactment the board had in several opinions construed "manufactures of cotton," and there is a strong presumption that that construction was adopted in the law as it is. Pulp made of cotton rags or linen rags by processes that do not destroy the integrity or strength of the fibers has undergone no such chemical change as would make these goods dutiable by similitude; the pulp was rightly held dutiable, according to the material, as a manufacture of cotton under paragraph 332, or as a manufacture of flax under paragraph 358, tariff act of 1909.

United States Court of Customs Appeals, December 6, 1911.

APPEAL from Board of United States General Appraisers, G. A. 7156 (T. D. 31235).

[Decision affirmed.]

Brown & Gerry for appellants.

Wm. K. Payne, Deputy Assistant Attorney General (*Martin T. Baldwin* on the brief), for the United States.

Before MONTGOMERY, SMITH, BARBER, and MARTIN, Judges.

MONTGOMERY, Presiding Judge, delivered the opinion of the court:

The importation in this case consists of sheets of pulp made from cotton rags and linen rags. The process of manufacture is described

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as follows: The rags, after being sorted, are cleaned and cut; then they go into boilers and subsequently into beaters to be beaten up into a soft fiber; next they are bleached, and finally sent to a drying machine and put into sheets or rolls. This rag pulp as imported is intended to be made into paper of a high quality.

The Board of General Appraisers found that in paper making from pulp the object sought is to draw out of the rags the fibers in a very fine state while preserving their strength as far as possible; that it is the "tissue" resulting from the deposition of the fibers on wire cloth while suspended in water that we know as, and term, paper; that the strength and integrity of the fibers determine the quality of the paper; that the rags are broken and pulped, but that neither the mechanical nor the chemical treatment thereof breaks or destroys the fiber itself.

The importation in this case was assessed for duty at 30 per cent ad valorem under the provisions of paragraph 415 of the tariff act of August 5, 1909, as paper not specially provided for. It was held by the Board of General Appraisers to be dutiable at 45 per cent ad valorem as manufactures of cotton or as manufactures of flax, it being immaterial as to whether the component material of chief value was flax or cotton, as if in chief value of cotton, it would be dutiable under paragraph 332, and if in chief value of flax, under paragraph 338, at the same rate, namely, 45 per cent ad valorem.

The claim made by the importer is that the importation is dutiable by similitude to wood pulp under paragraph 406 by authority of the similitude clause in paragraph 481. Paragraph 406 provides for mechanically ground wood pulp and chemical wood pulp. It is conceded that this should be given the higher rate of duty, namely, one-fourth of a cent per pound imposed on chemically ground wood pulp bleached. The question, therefore, is whether the importation is provided for in the tariff act by either paragraph 352 or paragraph 358, dependent upon which material (cotton or flax) is of chief value, or whether it is to be treated as a nonenumerated manufactured article and therefore dutiable by similitude to wood pulp.

While the dutiability of this material as cotton or flax has never been determined by the courts other than by the Board of General Appraisers, it has had consideration in three cases by the board. In the matter of the protest of J. W. Hampton, jr., & Co., G. A. 1866 (T. D. 13594), the subject of the protest was bleached cotton pulp, dried in sheets or cakes, to be used for filtering purposes. It was returned by the appraiser as a manufacture of cotton, and assessed for duty at 40 per cent ad valorem under paragraph 355 of the act of 1890. It was claimed to be dutiable as manufactures of wood or other pulp. It was found that the article in question was itself cotton pulp and not an article manufactured from or of cotton pulp,

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and being a manufacture of cotton, it was held to be properly assessed for duty by the collector.

In the matter of the protest of Hugo Reisinger, G. A. 2414 (T. D. 14692), certain pulp was assessed for duty at 40 per cent ad valorem as a manufacture of cotton under paragraph 355 of the tariff act of 1890. It was claimed to be free, as paper stock, crude; or, if dutiable, at 20 per cent under section 4 as a nonenumerated manufactured article; or at 25 per cent, as a manufacture of paper under paragraph 425; or at 35 per cent, as a manufacture wholly or chiefly of wood under paragraph 461. The board found the merchandise to be composed of cotton, flax, and wood, cotton the component material of chief value, and that it was not crude paper stock; and found that cotton, being the component material of chief value therein, the same was dutiable as a manufacture of cotton under paragraph 355.

With this construction of the term "manufactures of cotton" before it, Congress enacted the present statute, and a strong presumption arises that the term is used in the present act in the sense in which it had been interpreted by the board.

It is claimed, however, that in principle the question had been otherwise decided by the courts, and the case of Meyer *v.* Arthur (91 U. S., 570) is relied upon as a leading case upon the subject. In that case the question presented was whether white lead, nitrate of lead, oxide of zinc, and dry orange mineral are manufactures of metal within the meaning of the act of August 1, 1872, levying duties upon the manufactures of metals, or of which the metals, or either of them, is the component material of chief value. In that case the products in question were the products of metals which had undergone a chemical change and which had become something else than metals. Their characteristics as metal had disappeared. The metal had completely lost its identity and become a different mineral species.

In the present case the paragraph imposing a duty upon the manufactures of flax, hemp, ramie, or other vegetable fiber clearly indicates that the preservation of the fiber is sufficient to bring the article within the general term, "flax, hemp, or ramie." We think the same thing can be said of cotton, under paragraph 332, that it is the cotton fiber which is the crude cotton meant by the paragraph. In the present case, as the finding of facts indicates, the fibers of the cotton are retained. It is true they are cut somewhat; but the strength and integrity of the fibers determine the quality of the paper. It can not be said that they have disappeared or undergone a complete chemical change, as was the case in Meyer *v.* Arthur.

The case T. D. 27866 is cited as sustaining the contention of the importers. In that case the question was whether sawdust was a crude article used in dyeing within the meaning of the tariff act. The assessment was for waste not specially provided for. No ques-

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tion appears to have been raised as to whether sawdust was a manufacture of wood, and the case therefore is not in point. On the other hand, ground particles of wood, or wood flour, produced intentionally by the grinding operation, have been held to be dutiable as a manufacture of wood. Goldman *v.* United States (87 Fed Rep., 193); Nairn Linoleum Co. *v.* United States (151 Fed. Rep., 955).

The importers also cite the case, G. A. 1128 (T. D. 12356). The question there was whether a pulp produced from straw and reduced to fibers by beating or cutting with knives was dutiable as a manufacture of straw. It was held that the pulp, presenting none of the distinguishable characteristics of straw, was not to be classified as a manufacture of straw, and was dutiable by similitude to chemical wood pulp bleached.

The case is distinguishable from the present in that the fibers of the straw were not of crude material within the intent of the tariff act, while the fiber of cotton and of flax is the crude material, within the meaning of paragraph 332 and paragraph 358, respectively; and, as the board in the present case finds that the fibers are still retained to the extent at least that they perform an important office in the use of the article produced and imported, we are unable to say that they have lost their identity, as was the case of the article involved in T. D. 12356.

A further contention is made by counsel for the importer, which is that Congress having distinguished in prior acts between cotton and flax and pulp as components, merchandise like that at bar, which is in the form of pulp, can not be considered as a manufacture of cotton or flax, and attention is drawn to the fact that in paragraph 461 of the tariff act of 1890, paragraph 353 of the tariff act of 1894, and paragraph 433 of the tariff act of 1897 are found provisions for manufactures of wood or other pulp, and in paragraph 447 of the tariff act of 1909 provision is made for the manufactures of pulp generally. It is said that articles made out of the merchandise, the subject of the importation in this case, such as statuettes or trays, would be dutiable under this provision, although the material itself is not, and that these provisions for manufactures of pulp, when considered in connection with coexistent provisions for manufactures of cotton or flax which are found in the various tariff acts, indicate very clearly that, to the mind of Congress, pulp is a substance distinct from cotton or flax.

We do not see how this conclusion should follow from the premises. The fact that articles made from pulp might be dutiable at a different rate is no more significant than that articles made from cotton cloth might be dutiable at a different rate than is imposed upon the manufactures of cotton had Congress seen fit to provide *eo nomine* for such articles made up from cotton cloth.

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The cases cited to support the contention of counsel do not support the view contended for. The cases are Blumenthal *v.* United States (144 Fed. Rep., 384) and Seeberger *v.* Cahn (137 U. S., 95). In one of these cases the court was dealing with contrasting provisions in the same act, and it was held that in the acts in question in the one case Congress had erected a distinction between glass and paste and in the other between worsted and wool. In the present case the sole question is whether the product here in question is a manufacture of cotton or flax, and the fact that a provision is made for articles which might be made out of such manufactures of cotton, naming it as pulp, does not aid in determining whether the article in question, while it remains pulp, is in fact a manufacture of cotton or flax.

We think no error was committed by the board in determining the importation in question to be dutiable as manufactures of cotton or flax, and the decision of the board is therefore *affirmed.*

De Vries, Judge, did not sit in this case.

(T. D. 32094.)

Magnesia rings.

United States *v.* Fensterer & Ruhe (No. 620).

Magnesia Rings, Susceptible or Not of Decoration.

Reviewing the pertinent clauses of the former and of the present law, there appears no reason to hold the new law necessitates a new ruling as to the dutiable value of magnesia rings used for holding in place the incandescent mantles of gas burners; they were properly held dutiable at 35 per cent ad valorem under paragraph 95, tariff act of 1909, as articles composed wholly or in chief value of earthy or mineral substances, not specially provided for and not decorated, whether susceptible of decoration or not.—Fensterer & Ruhe *v.* United States (1 Ct. Cust. Appls., 93).

United States Court of Customs Appeals, December 6, 1911.

Appeal from Board of United States General Appraisers, Abstract 24819 (T. D. 31300).

[Decision affirmed.]

Wm. L. Wemple, Assistant Attorney General (*Wm. A. Robertson* on the brief), for the United States.

Comstock & Washburn (*Albert H. Washburn* of counsel) for appellee.

Before Montgomery, Smith, Barber, De Vries, and Martin, Judges.

Martin, Judge, delivered the opinion of the court:

The merchandise involved in this case consists of magnesia rings used for holding in place the incandescent mantles of gas burners. The importation was made under the tariff act of 1909, and the articles were classified by the collector as "manufactures of bisque,

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undecorated," and were assessed at 55 per cent ad valorem under the provisions of paragraph 94 of that act.

The importers duly filed their protest to this classification and contended that the merchandise should be assessed at 35 per cent ad valorem under paragraph 95 as articles composed wholly or in chief value of earthy or mineral substances, not specifically provided for and not decorated, whether susceptible of decoration or not.

The protest was heard by the Board of General Appraisers, and the same was sustained by the board. The Government now seeks a reversal of that decision.

There was no evidence taken before the board, and there are no exhibits filed. However, the parties agree that the merchandise in question is exactly similar to that involved in the case of Fensterer & Ruhe *v.* United States (1 Ct. Cust. Appls., 93). In that case the articles are described as bisque rings designed for incandescent burners, undecorated and insusceptible of decoration. This description is therefore accepted as correct in this case.

The importation in the case just cited had entered under the tariff act of 1897. The collector classified the wares as bisque and assessed duty upon them at 55 per cent ad valorem under the provisions of paragraphs 95 and 96 of that act. The action of the collector was sustained by the Board of General Appraisers. But on appeal this court held that the articles did not come within those paragraphs and that they were properly dutiable only at 20 per cent ad valorem under section 6 of the act as nonenumerated manufactured articles.

The following is a copy of paragraphs 95 and 96 of the tariff act of 1897, and also of the cognate paragraph 97, which will be hereinafter referred to:

95. China, porcelain, parian, bisque, earthen, stone, and crockery ware, including clock cases with or without movements, plaques, ornaments, toys, toy tea sets, charms, vases and statuettes, painted, tinted, stained, enameled, printed, gilded, or otherwise decorated or ornamented in any manner, sixty per centum ad valorem; if plain white and without superadded ornamentation of any kind, fifty-five per centum ad valorem.

96. All other china, porcelain, parian, bisque, earthen, stone, and crockery ware, and manufactures thereof, or of which the same is the component material of chief value, by whatever name known, not specially provided for in this act, if painted, tinted, stained, enameled, printed, gilded, or otherwise decorated or ornamented in any manner, sixty per centum ad valorem; if not ornamented or decorated, fifty-five per centum ad valorem.

97. Articles and wares composed wholly or in chief value of earthy or mineral substances, or carbon, not specially provided for in this act, if not decorated in any manner, thirty-five per centum ad valorem; if decorated, forty-five per centum ad valorem.

As has been stated above, in the former Fensterer & Ruhe case this court held that articles identical in character with these were not included within the provisions of any of the foregoing paragraphs.

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The reason for this decision, briefly stated, was that the provisions of the paragraphs prescribing a given duty if the wares were decorated and a less duty if they were not decorated necessarily implied that the wares must all be such as might be decorated; that is, such as were susceptible of decoration. Inasmuch as the goods in question were found as a matter of fact to be incapable of decoration they were held to be foreign to the paragraphs and were assessed as non-enumerated manufactured articles. This decision rested upon the authority of Dinglestedt *v.* United States (91 Fed. Rep., 112), decided in 1898, and United States *v.* Downing (201 U. S., 354), decided in 1906.

The goods now in question were imported under the present tariff act. They were classified by the collector as bisque wares undecorated, and assessed at 55 per cent ad valorem under the paragraphs of that act which correspond to paragraphs 95 and 96 of the prior act, as above copied. This ruling was, of course, made upon the theory that the present paragraphs differ from the former ones so as to include such articles which the former paragraphs, according to this court's decision, did not include. The Board of General Appraisers, however, in this case held that the difference in language of the corresponding paragraphs was not such as to justify this classification, and that the reasons and authority of the former Fensterer & Ruhe decision still govern such wares under the new paragraphs. This is the decision which the Government now appeals to this court, and the only question in the case is whether or not the decision made by this court respecting these articles under the former act still controls them under the corresponding paragraphs of the present act.

The following is a copy of paragraphs 93, 94, and 95 of the act of 1909, being the paragraphs corresponding to those above copied from the act of 1897:

93. China, porcelain, parian, bisque, earthen, stone and crockery ware, including clock cases with or without movements, pill tiles, plaques, ornaments, toys, charms, vases, statues, statuettes, mugs, cups, steins, and lamps, all the foregoing wholly or in chief value of such ware; painted, colored, tinted, stained, enameled, gilded, printed, or ornamented or decorated in any manner; and manufactures in chief value of such ware not specially provided for in this section, sixty per centum ad valorem.

94. China, porcelain, parian, bisque, earthen, stone and crockery ware, plain white, plain brown, including clock cases with or without movements, pill tiles, plaques, ornaments, toys, charms, vases, statues, statuettes, mugs, cups, steins, and lamps, all the foregoing wholly or in chief value of such ware, not painted, colored, tinted, stained, enameled, gilded, printed, or ornamented or decorated in any manner; and manufactures in chief value of such ware not specially provided for in this section, fifty-five per centum ad valorem.

95. Articles and wares composed wholly or in chief value of earthy or mineral substances, not specially provided for in this section, whether susceptible of decoration or not, if not decorated in any manner, thirty-five per centum ad valorem; if decorated, forty-five per centum ad valorem; carbon, not specially provided for in

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this section, twenty per centum ad valorem; electrodes, brushes, plates, and disks, all the foregoing composed wholly or in chief value of carbon, thirty per centum ad valorem.

The Government contends that two important changes appear in the phraseology of the new paragraphs. First, the word "otherwise," used in the earlier paragraph in connection with the words "decorated or ornamented," has been dropped from new paragraphs 93 and 94; and, second, at the close of both 93 and 94 are added the words "and manufactures in chief value of such ware." The Government argues that these changes of language are sufficient to show a legislative purpose to include such wares within the provisions of the new paragraphs, whether susceptible of decoration or not.

In answer to this it may be said that the omission of the word "otherwise" from the new paragraph does not seem to touch upon the matter in hand. That word did not enter into the former decision of this court in this matter. It had, indeed, an important place in the former act in determining the construction to be given the words "painted, tinted, stained, enameled, printed, or gilded," as therein used; but it had no relation to the question whether or not the wares therein described must be capable of decoration. That is, the use of the word "otherwise" implied that the words "painted," etc., were intended to cover only such as was decorative or ornamental in character and effect; but it did not enter into the construction which held that the wares must be capable of decoration in order to come within the meaning of the paragraphs. It may furthermore be said that the addition of the words "and manufactures in chief value of such wares" does not seem to affect the present inquiry. This provision did, in fact, substantially appear in former paragraph 96, and therefore is not wholly new. And besides that, it does not bear upon the question at issue.

Therefore the decision of the board in overruling the classification made by the collector was correct. And this is further sustained by the change in language between paragraph 97 of the former act and the corresponding paragraph 95 of the present act. This latter paragraph provides for articles composed of earthy or mineral substances not specially provided for, not decorated, whether susceptible of decoration or not. This last provision, "whether susceptible of decoration or not," is new in the act, and appears to be the unmistakable legislative answer to the same question raised by protests filed under the former act. The principle involved is thus recognized, and appropriate words are used to place such articles as are not susceptible of decoration under the new paragraph 95, leaving the preceding paragraphs to continue within the rule expressed in the former case. The decision of the board placing the articles at bar within paragraph 95 of the present act is therefore approved and the same is *affirmed*.

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(T. D. 32095.)

Leakage of sake.

FURUYA & CO. *v.* UNITED STATES (No. 668).

LEAKAGE OF RICE WINE OR SAKE.

In the past there has been much contention over sake and the leakage of sake, but the tariff act of 1909 would seem, by providing in paragraph 307 for rice wine or sake expressly and forbidding any allowance should be made for breakage, leakage, or damage on wines, to have placed the question beyond doubt. It was properly held, as here, no such allowance should be made on sake.

United States Court of Customs Appeals, December 6, 1911.

APPEAL from Board of United States General Appraisers, Abstract 25232 (T. D. 31478).

[Decision affirmed.]

John Giblon Duffy for appellants.

Wm. L. Wemple, Assistant Attorney General (*Wm. A. Robertson* on the brief), for the United States.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

MARTIN, Judge, delivered the opinion of the court:

Under the tariff act of 1909 the appellants imported into this country a shipment of sake, which is an alcoholic beverage manufactured from rice.

The collector held the importation to be dutiable under paragraph 307 of that act and assessed duty accordingly. There is no controversy concerning that classification or the rate of duty assessed by the collector. The importers, however, objected to the quantity upon which the collector computed the assessment. The collector assessed duty upon the entire quantity of sake which had been shipped, as shown by the invoice, whereas the importers alleged that part of the contents of the casks had been lost by leakage while in transit. The importers contended that no duty should be demanded for such part of the original exportation as had failed, because of this leakage, to reach port. The importers filed their protest against the assessment on that ground. This protest was heard by the Board of General Appraisers, and the same was overruled. The importers now pray for a reversal of that decision of the board.

The pertinent parts of paragraph 307 of the act of 1909 read as follows:

307. Still wines, including ginger wine or ginger cordials, vermuth, and rice wine or sake, and similar beverages not specially provided for in this section, in casks or packages other than bottles or jugs, if containing fourteen per centum or less of absolute alcohol, forty-five cents per gallon; * * * *And provided further:* That there shall be no constructive or other allowance for breakage, leakage, or damage on wines, liquors, cordials, or distilled spirits. * * *

The present tariff law is the first one which has fixed a rate of duty to be levied upon sake *eo nomine*. Under former acts that article

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was the subject of much litigation and there are many reported decisions relating to it. However, in the act of 1909, as appears by the above copy, sake was placed by name in the still-wine paragraph, and is therein called rice wine or sake. It nowhere distinctly appears that these two names apply only to the same identical article; that is, that they are exact synonyms. There may, indeed, be other kinds of rice wine besides sake; but the language of the act and the references to the article appearing in published cases make it safe to assume that the term "rice wine" at least includes sake, and that it is so used in the paragraph. As appears above, there follows in the same paragraph an express provision that there shall be no constructive or other allowance for leakage on wines. The question therefore arises whether there can be any allowance under the act for leakage of sake in transit in view of the provision that there shall be no allowance for leakage on wines.

Sake is made from rice by a process of fermentation, and grapes do not enter at all into its composition. In the ordinary use of terms, therefore, sake would not be called a wine. Under prior tariff acts it was held to be dutiable by similitude at the same rate as still wines. But in the present act it is specially placed within the still-wine paragraph and expressly named therein as a wine. In the nomenclature adopted by the paragraph, therefore, it becomes a kind of wine, whether it would ordinarily be so designated or not. This description of sake as a kind of wine is followed in the paragraph by the provision that there shall be no allowance for leakage on wines. It seems, therefore, to be a reasonable and natural interpretation of these provisions taken together to hold that one of the wines on which there shall be no allowance for leakage is the kind of wine also called sake, which is expressly named as a wine in the preceding recital of the paragraph. This seems, indeed, to be the very purpose for which the name rice wine was used in the paragragh, for there was otherwise no need of making the meaning of the word sake more definite by the use of such an explanatory alternative name. In the tariff vocabulary of mercantile terms sake had come certainly to have even a prominent place; there was no uncertainty as to the article to which that name applied. The alternative name, rice wine, therefore, seems to have been used for the purpose of adding that much to the original meaning of the term, namely, that for the purpose of the paragraph sake was to be considered as a kind of wine and to be included within any of its provisions which applied generally to wines.

This view finds support in the fact that under the act of 1897 there was much controversy as to whether this inhibitive provision applied to sake when that article was made dutiable as a still wine under the paragraph by similitude only. The Government then contended that the provision applied to sake; the importers contended that it

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did not. The importers argued that, even though sake was assessed as a still wine by similitude, nevertheless it was not actually a still wine, nor was it in fact a wine at all, and that the proviso prohibiting any allowance for leakage on wines should not be extended to it by implication or construction. The application of the term wine to the article in the present act seems to be an avoidance of this contention, for it shows a legislative purpose to place the article in the paragraph as a wine, subject to the general provisions relating to wines therein.

The appellants cite the vermuth case, United States *v.* Wile (178 Fed. Rep., 269) as an authority in support of their contention in this case. In that case it was held that the proviso now in question did not apply to vermuth, which is an article included *eo nomine* within the still wines paragraph of the act of 1897, as it is also in the present act. Appellants contend that the same reasoning which prevented the application of the inhibitive provision to vermuth would also prevent its application to sake. However, in the cited case the court held that vermuth was neither wine, liquor, cordial, nor distilled spirits, nor was it named as such in the paragraph, but rather that it was named therein as *sui generis*, and therefore that it did not come within the terms of the proviso, which related only to wines, cordials, liquors, and distilled spirits. But, as appears above, in the act of 1909 sake is denominated a wine in paragraph 307, and this is the paragraph which contains both the duty and the proviso. It is true that it is called rice wine or sake, and the claim may be made that the proviso applies only to wines which may be called such without further description or explanation. But, on the other hand, the term wines contained in the proviso is comprehensive and unqualified, and it is not a forced interpretation which makes it include all articles called wines by the terms of the same paragraph and in relation to the same general subject matter.

The decision of the board holding that no allowance is permitted by the act of 1909 for the leakage of sake while in transit is therefore approved; and the same is *affirmed*.

(T. D. 32096.)

Young fustic dyewood.

PERRY, RYER & CO. *v.* UNITED STATES (No. 669).

1. YOUNG FUSTIC DYEWOOD UNDER TARIFF ACT OF 1897.

Young fustic dyewood, cut or shredded into pieces, suitable to be packed in burlaps for shipment, has been thereby advanced in condition. The statutory provision of the act of 1897 relating to an advance in condition is unqualified and the importation of corresponding date was dutiable under paragraph 20 of that act.

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2. YOUNG FUSTIC DYEWOOD UNDER TARIFF ACT OF 1909.

But paragraph 559, tariff act of 1909, expressly provides for the free entry of such an importation, if not advanced in value or condition by any process or treatment whatever beyond that essential to the proper packing of it. This is the case here, and the rule of *stare decisis* does not apply. The importation of corresponding date was free of duty under tariff act of 1909.

United States Court of Customs Appeals, December 6, 1911.

APPEAL from Board of United States General Appraisers, Abstract 25204 (T. D. 31450).

[Decision affirmed as to part and reversed as to part.]

Searle & Pillsbury (*Wm. E. Waterhouse* of counsel) for appellants.

Wm. L. Wemple, Assistant Attorney General (*Charles E. McNabb* on the brief), for the United States.

Before MONTGOMERY, SMITH, BARBER, and MARTIN, Judges.

MARTIN, Judge, delivered the opinion of the court:

The merchandise involved in this case consists of young fustic dyewood. The appellants imported considerable quantities of this wood both under the tariff act of 1897 and that of 1909. The protests brought before the court in this case involve shipments under both acts.

The collector classified the importations as drugs, namely, woods used expressly for dyeing, advanced in value so as to be dutiable under paragraph 20 of each act, and in accordance with this ruling the merchandise was duly assessed. The importers protested against that classification and contended that the importations should properly be classified as drugs, namely, woods used expressly for dyeing, and not advanced in value or condition, and that as such they should be severally entitled to free entry under favor of paragraph 548 of the act of 1897 and paragraph 559 of the act of 1909. These several protests were heard together upon evidence by the Board of General Appraisers and were overruled. The appellants now pray for a reversal of the board's decision.

Inasmuch as the decision of this case depends in part upon the application of the several paragraphs above cited, they are here copied in full for convenience of reference.

Act of 1897:

20. Drugs, such as barks, beans, berries, balsams, buds, bulbs, bulbous roots, excrescenses, fruits, flowers, dried fibers, dried insects, grains, gums and gum resin, herbs, leaves, lichens, mosses, nuts, nutgalls, roots, stems, spices, vegetables, seeds (aromatic, not garden seeds), seeds of morbid growth, weeds, and woods used expressly for dyeing; any of the foregoing which are drugs and not edible, but which are advanced in value or condition by refining, grinding, or other process, and not specially provided for in this act, one-fourth of one cent per pound, and in addition thereto ten per centum ad valorem.

548. Drugs, such as barks, beans, berries, balsams, buds, bulbs, and bulbous roots, excrescenses, fruits, flowers, dried fibers, and dried insects, grains, gums, and gum resin, herbs, leaves, lichens, mosses, nuts, nutgalls, roots, and stems, spices, vege-

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tables, seeds aromatic, and seeds of morbid growth, weeds, and woods used expressly for dyeing; any of the foregoing which are drugs and not edible and are in a crude state, and not advanced in value or condition by refining or grinding, or by other process, and not specially provided for in this act.

Act of 1909:

20. Drugs, such as barks, beans, berries, balsams, buds, bulbs, bulbous roots, excrescenses, fruits, flowers, dried fibers, dried insects, grains, gums and gum resin, herbs, leaves, lichens, mosses, nuts, nutgalls, roots, stems, spices, vegetables, seeds (aromatic, not garden seeds), seeds of morbid growth, weeds, and woods used expressly for dyeing or tanning; any of the foregoing which are natural and uncompounded drugs and not edible, and not specially provided for in this section, but which are advanced in value or condition by any process or treatment whatever beyond that essential to the proper packing of the drugs and the prevention of decay or deterioration pending manufacture, one-fourth of one cent per pound, and in addition thereto ten per centum ad valorem: *Provided*, That no article containing alcohol, or in the preparation of which alcohol is used, shall be classified for duty under this paragraph.

559. Drugs, such as barks, beans, berries, balsams, buds, bulbs, bulbous roots, excrescenses, fruits, flowers, dried fibers, dried insects, grains, gums, gum resin, herbs, leaves, lichens, mosses, nuts, nutgalls, roots, stems, spices, vegetables, seeds (aromatic, not garden seeds), seeds of morbid growth, weeds, and woods used expressly for dyeing or tanning; any of the foregoing which are natural and uncompounded drugs and not edible and not specially provided for in this section, and are in a crude state, not advanced in value or condition by any process or treatment whatever beyond that essential to the proper packing of the drugs and the prevention of decay or deterioration pending manufacture: *Provided*, That no article containing alcohol, or in the preparation of which alcohol is used, shall be admitted free of duty under this paragraph.

There are at least two kinds of fustic wood imported into this country for use in dyeing. One grows in the West Indies and in South America. It attains the growth of large trees and is imported in sticks 4 to 6 feet in length and 14 to 16 inches in diameter, weighing about 8 sticks to a ton. The wood of this species is cut up and the dye extracted under pressure, the trunk of the trees being the part most valuable for this purpose. The color obtained from this material is a clear yellow and is mostly used in dyeing cotton and woolen goods. This species of fustic is not involved in this case, and its description is brought upon the record by the appellants only to prevent the present importation from being mistaken for it by reason of their identity of names.

The fustic composing these importations is called "young fustic" and grows only in the eastern Mediterranean countries. It is exported at Trieste, in Austria. It grows only as a shrub or stunted, irregular tree. The roots and branches are the valuable parts of the plant as dyewood, the trunks furnishing but little such extract. The dyeing material is extracted from the wood by boiling it in an open vat; the color produced from it is a greenish yellow. The dye is almost exclusively used in coloring glove leather, and probably 80 per cent

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of all the young fustic imported into this country is used for that purpose by the glove industries in Fulton County, N. Y.

As has been stated, the wood in question comes from a shrub or small tree, and the roots and branches are the parts which are richest in dyeing properties. These roots and branches are generally gnarled, irregular, and jagged in shape, and before shipment the wood is reduced in size by a process of cutting or shredding. The material resulting from this process is packed in coarse burlap sacks and in that shape is brought into this country.

There is some dispute in the testimony as to the average size of the pieces which finally result from the shredding process and which make up the importations. The official sample is contained in a glass bottle and is composed in most part of pieces as small as filberts. On the other hand, the appellants dispute the correctness of this as a fair sample and in turn produce exhibits which contain pieces of mixed sizes, some being as small as the official sample, while others are slivers of much greater size.

The decision of this case depends entirely upon the construction and effect which is to be given to the process of cutting and shredding the wood as above referred to. The Government contends that this treatment, whereby the wood is reduced in size, takes it out of the free paragraphs above quoted and places it within the dutiable ones. On the other hand, the importers contend that the wood is entitled to free entry notwithstanding the fact that it is reduced in size before importation.

In as far as the importations are controlled by the act of 1897 there does not seem to be much room for controversy. Paragraph 20 of that act fixes a duty upon "drugs, such as * * * woods used expressly for dyeing, * * * which are advanced in value or condition by refining, grinding, or other process." And paragraph 548, the correlative paragraph of the same act, provides for the free entry of "drugs, such as * * * woods used expressly for dyeing * * * not advanced in value or condition by refining or grinding, or by other process."

The process above mentioned whereby the roots and branches of the fustic are cut and shredded into pieces as small even as those contained in the importers' exhibit, must certainly constitute an advance in the value and condition of the wood. The wood of the roots and branches is to be used expressly for dyeing; so soon as it is severed from the ground it comes to this first estate as wood used expressly for dyeing. It has a certain value and is in a certain condition when it is thus severed from the ground. That condition is substantially changed and that value materially increased when the wood is afterwards ground or cut into small fragments, for in the new condition it may be transported at less expense and it is also in a form better

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adapted to its final use. The statutory provision of the act of 1897 relating to an advance in value or condition from refining, grinding, or other process is unqualified; any advance whatever in value or in condition, which results from refining or grinding, or other process, brings the wood within the dutiable class defined by paragraph 20 of that act.

It therefore seems clear that the importations entering under the act of 1897 were not free of duty as dyewood which was "not advanced in value or condition by refining or grinding, or by other process."

It may also be noted in this behalf that in G. A. 3489 (T. D. 17172) the Board of General Appraisers passed upon an importation of similarly shredded fustic which was entered under the tariff act of 1894. Paragraph 16½ of that act provided for the free entry of such dyewood if not advanced in value or condition by refining or grinding or by other process of manufacture. The board held that the wood as thus reduced to fragments by some kind of shredding process was not entitled to free entry under the foregoing provision. The language of paragraph 20 of the act of 1897 is not less comprehensive than the provisions of paragraph 16½ thus construed by the board in so far as the present controversy is concerned. Upon the substantial reenactment of the earlier provision into the later one the board of course gave the latter the same construction as the former.

However, as to those importations which were entered under the tariff act of 1909 a much more serious question presents itself. Under the applicable paragraphs of that act the corresponding provisions relating to advancement in value or condition are not so comprehensive and unqualified as are those of the former acts. Quite to the contrary, an advancement of such dyewood in value or condition by any process or treatment does not alone deny the article free entry if such advancement is essential to the proper packing of the wood or the prevention of decay or deterioration pending manufacture. The provision relating to proper packing of course covers and includes packing for transportation. A new element is thus introduced into the paragraph which was not before the board in the case above cited, relating to like importations under the act of 1894. Under the prior acts such an importation was denied free entry if it had been advanced at all in value or condition by refining, grinding, or other process. Under the act of 1909, however, such an importation is given free entry, notwithstanding such an advance in value or condition by any process or treatment, provided only the advance so made be essential to its proper packing, or, as applied to this case, its proper packing for transportation.

The importers maintain that the fustic wood herein involved comes within this provision, that it was impracticable to ship the natural

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roots and branches in their shape and condition when taken from the tree, and that they were reduced in size to such an extent only as was essential to their proper packing for transportation.

The Government contends to the contrary—that the reduction in size of the wood was not essential to proper packing for transportation and that it was not done for that purpose only, but that the wood was reduced in size chiefly for the purpose of better fitting it for the boiling process for which it was designed and by means of which its dyeing properties were to be extracted. The Government contends that the reduction of the wood was therefore not essentially a part of its packing for transportation, but was rather the first step taken in the process of manufacturing dyeing material from it.

The question involved in the case therefore virtually becomes a question of fact, namely, whether the reduction of the wood to its condition at importation was essential to its proper packing or not.

From the testimony and the exhibits it appears quite clear that it is not practicable to ship the fustic wood in question in its natural shape and condition. If it were shipped in bulk in that condition, the freight rates would be unreasonable; if it were packed in its natural condition in sacks, its jagged projections would tear open the sacks and the contents would be scattered and lost. Therefore it is clear that the wood must be reduced in size to some extent in order to pack it for transportation.

It is also true that any such reduction in size does at the same time put the wood in better condition for its final use. As has been stated, the process of extracting the dyeing material from the wood is by placing it in open kettles and boiling it. The kettles used for this purpose are not large enough to contain the natural roots and branches of the fustic, and besides the smaller the pieces into which the wood is reduced the more speedily and economically may the boiling process be completed. Therefore, the importers have necessarily a double interest in reducing the size of the wood, first, in order to prepare it for shipment and, second, in order to add to its value as a commodity by better preparing it for its final use in the boiling kettles. However, in case the applied process reduces the wood only so far as to fit it for shipment with reasonable commercial economy in view of all the conditions and circumstances of the case, such process alone does not deprive the wood of free entry, even though incidentally the value of the wood is also thereby increased as a commodity by becoming better adapted to its final use.

It is apparent that it may at times be difficult to find the proper dividing line in this process, so as to say with certainty that thus far the reduction is essential to proper packing and that any additional reduction is chargeable to the preparation of the wood for its final

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manufacture. And in this case that difficulty is plainly present, for this importation touches the border line between the two classes. However, there are several considerations which lead to a reversal of the decision entered by the board against the importers. In the first place, there is a substantial disagreement concerning the size of the pieces to which the fustic was actually reduced for importation. The pieces produced as samples by the Government are quite small, but the importers produce much larger pieces and establish by the testimony that these are more correctly representative of the importation. It is plain from an examination of the exhibits that the pieces are dry and brittle and are cut in such a way that they easily crumble from handling. They therefore constantly tend to become smaller as they are examined, and this somewhat prejudices the importers' case. If the pieces when imported were of the size claimed by the importers, they would not seem to be beyond such a reduction as was essential to proper packing. In the next place, the reasons given by the board for its decision are important; they are contained in the following extract:

> The article in question is the root, trunk, and branches or limbs of the fustic tree, cut, broken, shredded, or otherwise reduced to chips, and is used in the process of coloring glove leather, imparting a yellowish color to the leather. As far as name, use, and description of the merchandise, the board, in G. A. 3489 (T. D. 17172), held fustic of like character and similar in condition to be a dyewood advanced, and upheld the assessment. Under the doctrine of *stare decisis* it is incumbent upon the board to follow this decision unless the evidence in the case at bar, or the issue presented, differs materially from that which was the basis of the board's decision in G. A. 3489, *supra*. An examination of the records in both cases, however, discloses the fact that the fustic here in issue is identical in all respects with that covered by G. A. 3489, *supra*.
>
> We find the merchandise to be advanced in value or condition and hold it dutiable as assessed.

It appears from the foregoing extract that the board found this fustic to be identical in character with that held to be dutiable under the act of 1894; and the board therefore similarly classified it under the act of 1909, by force of the rule of *stare decisis*. But the several acts contain entirely different provisions in relation to such an article. As has already been noted the earlier act refused free entry to such wood if it was at all advanced in condition; but the latter act allowed free entry, notwithstanding an advancement in the condition of the wood, provided only such advancement was essential to its proper packing. The issues presented by the two several cases are therefore essentially different, and the rule of *stare decisis* alone is not controlling.

The opinion as above quoted correctly states that the issues presented in the several cases must be substantially alike in order that the rule of *stare decisis* should apply; but in the decision which follows

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that rule is applied notwithstanding the fact that the several issues are actually different.

For these reasons, taken together, the court *reverses* the decision of the board in so far as it relates to the merchandise imported under the act of 1909.

Modified.

DE VRIES, Judge, did not sit in this case.

(T. D. 32097.)

Tamarinds.

UNITED STATES *v.* JOHN DUNCAN'S SONS ET AL. (No. 733).

TAMARINDS, PACKED IN MOLASSES.

It appears that "tamarinds" as a commercial designation has been accepted for a number of years in the administration of our tariff laws, and having been incorporated in the tariff act of 1909, it is to be inferred the interpretation so established was there adhered to. The addition of the words "packed in molasses" will not suffice to change the classification. The importation was entitled to free entry.

United States Court of Customs Appeals, December 6, 1911.

APPEAL from Board of United States General Appraisers, Abstract 26197 (T. D. 31788).

[Decision affirmed.]

Wm. L. Wemple, Assistant Attorney General (*Leland N. Wood* on the brief), for the United States.

Brown & Gerry for appellees.

Before MONTGOMERY, SMITH, BARBER, and MARTIN, Judges.

MONTGOMERY, Presiding Judge, delivered the opinion of the court:

This importation consisted of tamarind fruit, to which molasses had been added, imported in barrels. It was returned for duty at 1 cent per pound and 35 per cent ad valorem under paragraph 274 of the tariff act of 1909, the relevant part of which is as follows:

* * * Comfits, sweetmeats, and fruits of all kinds preserved or packed in sugar, or having sugar added thereto, or preserved or packed in molasses, spirits, or their own juices. * * *

On appeal to the Board of General Appraisers the importation was admitted free under the provision of the free list, paragraph 688, as tamarinds. The Government appeals from this decision.

It is contended that this fruit is not tamarinds in its natural state, as it appears that the pod or shell has been removed. It appears, however, from the testimony of the importers' witnesses that the importation in question is the tamarinds known to commerce, and has been imported in the manner in which this was imported for

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many years, one of the importers' witnesses having had an experience of 30 years, and indeed none of the witnesses in the case instances the importation of tamarinds in any other condition, except small importations in its green state, which we hereinafter refer to. While the record is not very clear, the inference is strong that the sugar contents of this fruit are what give it its value for medicinal and other purposes, and this is preserved in the present importation. It is a product sold mainly to the drug trade.

A somewhat analogous question has arisen with reference to the free-list provision for shrimps and other shellfish, and it has been held that the removal of such shellfish from their shells, and even cooking and preparing them for use, does not take them out of the free list and place them under the other provisions of the tariff law. See *In re* Wyman & Co., G. A. 6503 (T. D. 27791), and *In re* protest of Doyen, G. A. 6052 (T. D. 26387).

But we think the case need not be rested on analogy. As before stated, the proof discloses that importations of tamarinds in this form have been made for many years, and that they constitute the commodity known commercially as tamarinds.

The Government introduced witnesses to show the chemical analysis of green tamarinds, and in order to meet the testimony as to commercial designation, two inspectors were examined. The first inspector called by the importer testified that the goods in question here were tamarinds. But he also testified, on cross-examination, that he had seen tamarinds in other condition, namely, fresh in the pod, and that such tamarinds had been received at the port of New York. The question of how numerous were the importations was not gone into by this witness, but the Government later called another examiner of merchandise at the port of New York and introduced evidence showing that tamarinds in the green state had been imported. He testified that they were imported in baskets and that he had had four years' experience, during which time two importations of green tamarinds had been passed on by him. When asked in what quantity green tamarinds had been imported, he replied, "Small quantities—a couple of baskets," and further testified that a small percentage of the importation of tamarinds came green. This testimony is not sufficient to overcome the testimony of the importers' witnesses that the tamarinds, such as was introduced in this importation, is the article of commerce, and this view is strengthened by the fact that tamarinds in molasses is not a new article of commerce.

Tamarinds were mentioned in the free list in 1872 and again in 1883, apparently omitted in 1890 and 1894, but reintroduced in the free list in 1897 and continued in 1909. As early as January, 1883, the Secretary of the Treasury had submitted to him the question of whether

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tamarinds, which prior to being packed in barrels had a quantity of crude molasses poured over them to keep them fresh during the voyage, were classifiable under the provision for fruit preserved in molasses. The Secretary, in his statement of the case (T. D. 5552), said:

The appraiser states, however, that the tamarinds underwent no process of preservation in the sense in which that word is usually understood when applied to preserved fruits, and that 95 per cent of the tamarinds imported prior to the time when they were placed on the free list were preserved in the same manner as those embraced in this appeal, and that they constituted then, as they do now, the tamarinds of commerce.

Tamarinds being exempted by law from duty, and the merchandise in question being tamarinds in the condition in which usually imported, they are free under the statute.

The word "tamarinds" having been, after this declaration of the Treasury Department, introduced in the act of 1883 and again in the act of 1897 and in 1909 the presumption is very strong that it is this article of tamarinds which Congress sought to exempt. It is the tamarinds of commerce.

Cases cited in which a reduction of fruits to pulp, such as date paste or cakes of nuts, had so changed the identity of the original articles as to place them under different classifications are not of much value in determining the question here presented, for we have here strong evidence that the tamarinds of commerce are tamarinds imported, as were those in the present case. The general rule that an *eo nomine* designation is controlling as against a mere general provision is recognized. But it is claimed on the authority of Brennan *v.* United States (136 Fed. Rep., 743), United States *v.* Reiss (136 Fed. Rep., 741), and Rich *v.* United States (61 Fed. Rep., 501) that this rule is not unyielding, but that the real purpose should be to gather the intent of Congress from the enactment. This is a correct statement of the law; but we think it does not militate against the position of the importers in the present case. In De Forest *v.* Lawrence (13 How., 274) the question involved was whether sheepskins were dutiable as raw hides and skins of all kinds, whether dry, salted, or pickled. After reviewing the tariff acts upon the subject the court said:

The article (sheepskins with the wool on) has never been classed in any of the tariff acts under the designation of skins; but has been charged always, since it came under the notice of these acts, with a specific duty. It has been thus charged, since the act of 1828, down to the present act, a period of 18 years. And, although it has been invoiced, and is known in trade and commerce, by the designation of sheepskin raw, and dried, and may, generally speaking, be properly ranged under the denomination of skins, as a class; yet, having a known designation in the revenue acts, distinct from the general class to which it might otherwise be assigned, we must regard the article in the light in which it is viewed by these acts, rather than in trade and commerce. For, when Congress, in legislating on the subject of duties, has

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described an article so as to identify it by a given designation for revenue purposes, and this has been so long continued as to impress on it a particular designation as an article of import, then it must be treated as a distinct article, whether there be evidence that it is so known in commerce or not. It must be taken as thus known in the sense of the revenue laws, by reason of the legal designation given to it, and by which it has been known and practiced on at the customhouse.

If this language be applied to the present importation, there can be but one conclusion reached as to the intent of Congress in the employment of the word "tamarinds" since 1883. It has been the rule of interpretation announced by the Secretary of the Treasury and continued through three different tariff acts that tamarinds included an article other than fresh tamarinds, and when that word is employed in the free list it refers to the tamarinds of commerce. We can not conceive that it was the purpose of Congress to depart from this long-continued designation of tamarinds, nor do we think that it should be excluded from the free list by any uncertain enactment. Indeed this rule is conceded by Government's counsel, and it is admitted that the rule is settled that Congress, in reenacting successive tariff acts containing the same provision, must be understood to have so legislated in the light of departmental construction or construction given to such language by the courts, citing United States *v.* Proctor (145 Fed. Rep., 126).

But it is claimed that as the words "packed in molasses" have been added to the preserved-fruit paragraph of the present act, phraseology which had not appeared in any previous tariff law, the court is called upon to determine which is the proper classification, and it is said in this connection that there is evidence in the record that tamarinds, fresh in the pod, are now the subject of importation and of commercial transactions. As we have pointed out, the commercial transactions in fresh tamarinds are very limited indeed, and it is very doubtful whether the case would not fall in this aspect within the ruling of this court in United States *v.* Rosenstein (1 Ct. Cust. Appls., 304). But whether it does or not, the history of the meaning which has been given in the previous tariff acts and by departmental construction for many years leads to the conclusion that the word "tamarinds" in the free list is used in a sense sufficiently comprehensive to cover the importation in question. While it is true that the provisions of paragraph 274 are broadened by the addition of the new words "preserved or packed in molasses," this fact does not operate to bring within its provisions an importation which in terms is made free in the free list. It would not be material under what provision of the tariff law the claim of free entry was asserted. If tamarinds such as those involved were not the tamarinds of commerce, they would have been dutiable under previous statutes under the catch-all clause. The long-continued usage of the

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Treasury Department went further than to exclude the importation from the comfit and sweetmeats section, but affirmatively established that they were entitled to entry under the free list.

The Board of General Appraisers reached the correct result, and the decision is *affirmed*.

De Vries, Judge, did not sit in this case.

(T. D. 32098.)

Drawback on tin containers.

Drawback on tin containers manufactured by the American Tobacco Co., of New York, with the use of imported knives or cutters.

Treasury Department, *December 18, 1911.*

Sir: Drawback is hereby allowed under section 25 of the tariff act of August 5, 1909, and the regulations promulgated thereunder (T. D. 31695 of June 16, 1911), on tin containers manufactured by the American Tobacco Co., of New York, with the use of imported knives or cutters, said cutters being permanently attached and used for the purpose of opening the hermetically sealed tins.

The allowance shall not exceed one knife or cutter for each can exported.

The manufacturers' sworn statement, dated November 15, 1911, is transmitted herewith for filing in your office.

Respectfully, James F. Curtis,
(92187.) *Assistant Secretary.*

Collector of Customs, *Baltimore, Md.*

(T. D. 32099.)

Drawback on inner tubes for automobile tires.

Drawback on inner tubes for automobile tires manufactured by the Michelin Tire Co., of Milltown, N. J., with the use of imported metric thread valves.

Treasury Department, *December 18, 1911.*

Sir: Drawback is hereby allowed under section 25 of the tariff act of August 5, 1909, and the regulations promulgated thereunder (T. D. 31695 of June 16, 1911), on inner tubes for automobile tires manufactured by the Michelin Tire Co., of Milltown, N. J., with the use of imported metric thread valves.

The allowance shall not exceed one imported valve for each inner tube exported.

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The manufacturers' sworn statement, dated November 17, 1911, is transmitted herewith for filing in your office, and a sample of a section of an inner tube with the imported valve attached is forwarded under separate cover.

Respectfully, JAMES F. CURTIS,
(91978.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 32100.)

Drawback on lead washers.

Drawback on lead washers manufactured by the American Casting Co., of Brooklyn, N. Y., with the use of imported refined lead.

TREASURY DEPARTMENT, *December 18, 1911.*

SIR: Drawback is hereby allowed under section 25 of the tariff act of August 5, 1909, and the regulations promulgated thereunder (T. D. 31695 of June 16, 1911), on washers manufactured by the American Casting Co., of Brooklyn, N. Y., with the use of imported refined lead.

The allowance shall not exceed the net weight of the exported washers.

The manufacturers' sworn statement, dated November 13, 1911, is transmitted herewith for filing in your office.

Respectfully, JAMES F. CURTIS,
(91917.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 32101.)

Drawback on steel shanks.

Drawback on steel shanks manufactured by the Union Shank Co., of Whitman, Mass., from imported steel.

TREASURY DEPARTMENT, *December 20, 1911.*

SIR: Drawback is hereby allowed under section 25 of the tariff act of August 5, 1909, and the regulations promulgated thereunder (T. D. 31695 of June 16, 1911), on steel shanks manufactured by the Union Shank Co., of Whitman, Mass., from imported steel.

The allowance should not exceed the quantity shown in the manufacturer's sworn statement and schedule, dated December 11, 1911, transmitted herewith for filing in your office, there being no wastage.

Respectfully, JAMES F. CURTIS,
(74697.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *Boston, Mass.*

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(T. D. 32102.)

Drawback on marble slabs.

Drawback on marble slabs manufactured for and on account of the Tompkins-Kiel Marble Co., of New York City, with the use of imported marble blocks by the Hilgartner Marble Co., of Baltimore, Md.

TREASURY DEPARTMENT, *December 20, 1911.*

SIR: The department's regulations of January 19, 1899 (T. D. 20569), providing for the allowance of drawback on marble slabs manufactured by the Evans Marble Co., of Baltimore, Md., from imported marble in blocks, are hereby extended, so far as applicable, to cover slabs manufactured for and on account of the Tompkins-Kiel Marble Co., of New York City, from imported marble blocks by the Hilgartner Marble Co., of Baltimore, Md.

There should be filed with each entry the proper certificate of manufacture by the company manufacturing the slabs.

The sworn statement of the Tompkins-Kiel Marble Co., dated November 23, 1911, is inclosed herewith for filing in your office.

Respectfully, JAMES F. CURTIS,
(48326.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 32103.)

Drawback on cigarette tips.

Drawback on cigarette tips in reels or separately manufactured by the Boucher Cork & Machine Co. (Inc.), of New York City, from imported cork sheets.

TREASURY DEPARTMENT, *December 20, 1911.*

SIR: Drawback is hereby allowed under section 25 of the tariff act of August 5, 1909, and the regulations promulgated thereunder (T. D. 31695 of June 16, 1911), on cigarette tips in reels or separately manufactured by the Boucher Cork & Machine Co. (Inc.), of New York City, from imported cork sheets.

The quantities of imported cork in sheets to be taken as the basis for the allowance of drawback shall not exceed for each 100 reels, or each box of 25,000 tips exported, the quantities set forth in the manufacturers' sworn statement, dated December 11, 1911, transmitted herewith for filing in your office.

Respectfully, JAMES F. CURTIS,
(92087.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 32104.)

Dockets for the hearing of cases by the Boards of United States General Appraisers, at ports other than the port of New York, for the calendar year 1912.

TREASURY DEPARTMENT, *December 21, 1911.*

To officers of the customs and others concerned:

The appended docket, prepared by the president of the Board of United States General Appraisers, is hereby published for your information.

JAMES F. CURTIS, *Assistant Secretary.*

Dockets for the hearings of cases by the Boards of United States General Appraisers and individual general appraisers at ports other than the port of New York, 1912.

OFFICE OF THE BOARD OF
UNITED STATES GENERAL APPRAISERS,
641 Washington Street, New York, December 15, 1911.

Under and by virtue of the authority conferred by the customs administrative act of 1890, as amended by the act of August 5, 1909, and for the purpose of hearing appeals in both classification and reappraisement cases at ports other than the port of New York, the following dockets therefor are hereby promulgated:

Ports.	January.	February.	March.	April.	May.	June.	July.	September.	October.	November.	December.
Philadelphia	22		25	22	27			23	28		16
Baltimore	24		27		29			25			18
Boston	24		27	24	28	26		25		26	
Chicago	17	14	27	24		12			9		11
St. Paul						14					
St. Louis				8					7		
New Orleans				15					14		
Seattle		21				19			16		
Portland		24				21			19		
San Francisco		27				24			22		
Los Angeles			6				3		31		
Pittsburgh							9				
Buffalo							10				
Cleveland							11				
Detroit							12				

Whenever it shall appear to the president of the Board of General Appraisers that there are not pending at any port in the schedule herein a sufficient number of cases to warrant the visit of a general appraiser, or for other sufficient cause, he will, after due notice, extend the time appointed for such docket to a future day.

Whenever a docket day herein fixed falls upon a holiday, such docket will be called upon the day following.

Said dockets and each of them will be called at the hour of 10 o'clock in the morning of the day appointed, except otherwise specially designated, and all pending cases be heard or set for trial as the general appraiser in attendance may direct.

Upon transmittal of records from ports other than New York to the Board of General Appraisers in cases in which local hearings are to be had the sample will, after being properly carded (Form Cat. No. 183 or 184) for identification with such records, be retained in the local office for use at such hearings, and thereafter be immediately indorsed with the board numbers and transmitted with such records to the Board of General Appraisers.

HENDERSON M. SOMERVILLE,
President General Board of United States General Appraisers.

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(T. D. 32105.)

Drawback on "tastells."

Drawback on cake icings, designated as "tastells," manufactured by S. Gumpert & Co., of Brooklyn, N. Y., with the use of imported glycerin, sugar, beer color, cocoa, and oil of orange.

TREASURY DEPARTMENT, *December 20, 1911.*

SIR: Drawback is hereby allowed under section 25 of the tariff act of August 5, 1909, and the regulations promulgated thereunder (T. D. 31695 of June 16, 1911), on cake icings, designated as "tastells," manufactured by S. Gumpert & Co., of Brooklyn, N. Y., with the use of imported glycerin, sugar, beer color, pulverized cocoa, and oil of orange.

The quantities to be taken as the basis for the allowance of drawback shall not exceed those set forth in the manufacturers' sworn schedules, dated December 9, 1911, transmitted herewith for filing in your office, no allowance being made for wastage.

The manufacturers' sworn statement, dated November 9, 1911, is also transmitted herewith for filing.

Respectfully, JAMES F. CURTIS,
(90641.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 32106.)

Pocket toilets—Mirrors.

Appeal directed from the decision of the Board of United States General Appraisers of October 24, 1911, Abstract 26951 (T. D. 31971), involving the classification of certain so-called pocket toilets containing a mirror and various articles.

TREASURY DEPARTMENT, *December 22, 1911.*

SIR: The department is in receipt of your letter of the 20th instant in relation to the decision of the Board of United States General Appraisers of October 24, 1911, Abstract 26951 (T. D. 31971), involving the classification of certain so-called pocket toilets containing a mirror and various articles, which were held to be properly dutiable as mirrors, and therefore dutiable under paragraph 109 of the tariff act at the rate of 45 per cent ad valorem, whereas duty was assessed upon the merchandise as in chief value of pyroxylin.

In view of the importance of the issue, you are hereby requested to file, in the name of the Secretary of the Treasury, an application with the United States Court of Customs Appeals for a review of the said decision, in accordance with the provisions of subsection 29 of section 28 of the tariff act of August 5, 1909.

Respectfully, JAMES F. CURTIS,
(92245.) *Assistant Secretary.*
Hon. WM. L. WEMPLE,
Assistant Attorney General, New York.

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(T. D. 32107—G. A. 7309.)

Dutiable value—Pro forma invoice.

NOTE.—The decisions published in the weekly Treasury Decisions, No. 24, vol. 21, as T. D. 32070—G. A. 7306 and Abstracts 27284 and 27285 have been merged and appear here as T. D. 32107—G. A. 7309.

1. PRO FORMA INVOICE—CONSULAR INVOICE.

Where the collector in the liquidation of an entry has before him a pro forma invoice and a consular invoice containing several items, and there has been an appraisement, he should not select the high values from each invoice and assess duty accordingly.

2. SAME.

The liquidation of an entry upon a pro forma invoice where a bond is given to produce a consular invoice considered.

United States General Appraisers, New York, December 4, 1911.

In the matter of protests 460449, etc., of William A. Brown & Co. et al. against the assessment of duty by the collectors of customs at the ports of New York, Boston, and Chicago.

Before Board 3 (WAITE, SOMERVILLE, and HAY, General Appraisers).

Protest 460449 of William A. Brown & Co.

HAY, *General Appraiser:* In this case an automobile and accessories were entered on a pro forma invoice and a bond was given for the production of a consular invoice. The pro forma invoice states the values as follows:

Chassis, without tires	£273. 13. 0
Limousine body	100. 00. 0
Accessories	40. 00. 0
Packing	10. 00. 0
Total	423. 13. 0

And they were entered at this value. The appraiser valued the limousine body and the accessories together at £127.1.11 and passed the balance of the invoice as correct. The consular invoice, which was produced in cancellation of the bond, gives the values following:

Chassis (less allowance for tires)	£320. 3. 2
Body	110. 0. 0
Accessories	17. 1. 11
Packing	9. 10. 0
Total	456. 15. 1

There was no appraisement after the filing of the consular invoice, the only appraisement of the merchandise being that upon the pro forma invoice, as above stated.

The collector liquidated the entry, assessing the chassis and body for duty at the value given in the consular invoice and the accessories at the value in the pro forma invoice, and by this method of liquidation reached a sum for the total invoice which is in excess of

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the pro forma invoice value, in excess of the appraised value, and in excess of the consular invoice value. This, we think, is without authority of law, unjust, and hence repugnant to the principles which underlie the law. Where an entry is composed of a number of items, and there is both a pro forma invoice and a consular invoice, under circumstances as stated in this case, the collector must either adopt one or the other, unless there has been an appraisement of the merchandise which differs from one or the other, or both, and then it is his duty to liquidate upon the value found in the last appraisement or reappraisement, if not less than the entered value. He can not, as he did in this instance, pick out the high value from each and assess duty thereon.

It was held by this board in Foard's case, G. A. 6723 (T. D. 28796), and Bennett's case, Abstract 19656 (T. D. 29267), that in a case like the one at bar the liquidation should be made upon the value stated in the consular invoice, and this view was upheld by the Circuit Court for the Southern District of New York in United States *v.* Bennett (176 Fed. Rep., 580; T. D. 30210). The latter case, however, has been reversed by the Court of Customs Appeals in a lengthy opinion in United States *v.* Bennett (T. D. 31975.)

The protest is therefore sustained for reasons which are manifest from this brief opinion, and the collector is directed to reliquidate the entry, following in the assessment of duty in that reliquidation the decision of the Court of Customs Appeals in United States *v.* Bennett, *supra.*

Protest 509940 of Clinton E. Hobbs, of Boston.

In this case certain imported merchandise was entered upon a pro forma invoice, and the value given in this pro forma invoice was approved by the appraiser as the correct value of the merchandise. Subsequently a consular invoice was filed with the collector, upon which the merchandise was given a higher value. The collector in the liquidation of the entry adopted the value given in the consular invoice and assessed duty accordingly. This is apparently in conflict with the decision of the Customs Court in United States *v.* Bennett (T. D. 31975). The protest is therefore sustained and the collector directed to reliquidate the entry in accordance with said decision.

Protests 507959–38131 of R. R. Donnelly & Sons Co., and 508022–37856 of G. W. Sheldon & Co., of Chicago.

These protests are against the liquidation by the collector at the port of Chicago upon a pro forma invoice before the expiration of the period of the bond which was given to produce a consular invoice. The consular invoice was filed subsequent to the liquidation. There

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was an appraisement of the merchandise upon the pro forma invoice, and this appraisement and the subsequently filed consular invoice both show a value less than that stated in the pro forma invoice. The importers were therefore required to pay duty upon a value in excess of the market value, or in excess of the value which the law requires him to pay duty on.

It is not important what may have been the view of this board prior to the decision of the Customs Court in United States *v.* Bennett (T. D. 31975). We consider this decision to be binding, and, following it, the protests are overruled.

(T. D. 32108—G. A. 7310.)

Grapes—Act 1909—No allowance for nonimportation produced by decay.

1. PARAGRAPH 276, ACT OF 1909.

Grapes imported in barrels or other packages are dutiable under paragraph 276, tariff act of 1909, at 25 cents per cubic foot of capacity of barrels or packages.

2. NO ALLOWANCE FOR DECAY UNDER SUBSECTION 22 OF SECTION 28.

This paragraph levies a duty on the packages containing the grapes, and not on the quantity of grapes contained in such packages. Hence no allowance can be made as a nonimportation for decay in the fruit prior to arrival in this country.

United States General Appraisers, New York, December 19, 1911.

In the matter of protests 487012, etc., of H. Harris & Co. et al. against the assessment of duty by the collector of customs at the port of Boston.

Before Board 3 (WAITE, SOMERVILLE, and HAY, General Appraisers).

SOMERVILLE, *General Appraiser:* The importations in these cases consist of grapes, which were assessed for duty at 25 cents per cubic foot on the capacity of the packages under paragraph 276 of the tariff act of 1909, which reads as follows:

276. Grapes in barrels or other packages, twenty-five cents per cubic foot of capacity of barrels or packages.

The importers claim that this assessment is without warrant of law, and that a portion of the fruit was so decayed on arrival in this country that it was rotten and worthless and constituted to this extent a nonimportation; and that they are accordingly entitled to a deduction of duty under subsection 22 of section 28 of the tariff act of 1909.

The collector appointed an appraiser to ascertain the amount of the alleged rot, and he has reported the same in each case within the time required by law. His testimony taken at the hearing sustains his reports. The report of the inspectors in charge of the merchandise stated that the goods at time of arrival were apparently in a sound condition.

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The collector declined to make any allowance by way of deduction of duty on the authority of instructions from the Treasury Department, dated November 1, 1910, which read as follows:

The department is in receipt of your letter of the 24th ultimo relating to the making of an allowance for damage or decay in importations of Almeria grapes.

The department concurs in the opinion therein expressed that inasmuch as grapes in barrels or other packages are subject to a duty based upon the capacity of the containers thereof no allowance for damage because of decay can be allowed thereon.

The entire contents of a barrel or other package may, however, be abandoned under the provisions of subsection 22 of section 28 of the tariff act, provided the quantity abandoned amounts to 10 per cent of the total value or quantity of the invoice.

Said subsection 22 of section 28, upon which the importers base their claim, reads as follows:

SEC. 22. No allowance shall be made in the estimation and liquidation of duties for shortage or nonimportation caused by decay, destruction or injury to fruit or other perishable articles imported into the United States whereby their commercial value has been destroyed, unless under regulations prescribed by the Secretary of the Treasury. Proof to ascertain such destruction or nonimportation shall be lodged with the collector of customs of the port where such merchandise has been landed, or the person acting as such, within ten days after the landing of such merchandise. * * *

The duty imposed under said paragraph 276 seems to be a duty upon the capacity of the barrels or packages, and not upon the quantity of grapes contained therein. It seems to have been assumed by Congress that importers would import grapes in standard packages of a certain size and that they would fill these packages to their average capacity. Hence, if a barrel of grapes should arrive with 25 per cent loss *in transitu* before arrival at the port of New York it is clear that no allowance could be made for this shortage, because, as we have said, the assessment is made upon the package and not upon the quantity of grapes. We can see no difference between that case and the present one, where a quantity of the merchandise has been lost by decay or rot.

In the case of United States *v.* Mayer (71 Fed. Rep., 501; 18 C. C. A., 221) the Circuit Court of Appeals construed paragraph 299 of the tariff act of 1890, which, so far as pertinent, reads as follows:

299. Grapes, sixty cents per barrel of three cubic feet capacity or fractional part thereof. * * *

The merchandise in that case consisted of small barrels of Malaga grapes packed in the usual way in cork dust or sawdust. The court there reversed the decision of the Circuit Court as reported in 66 Federal Reporter, 719, where it was held that no duty could be taken in such a case upon the sawdust and that a deduction should be made accordingly for the amount of that article. This ruling was, however, reversed by the Circuit Court of Appeals. It was observed by this court as follows:

It is obvious that the duty upon oranges was imposed by the package [referring to paragraph 301 of the tariff act of 1890, which reads as follows]:

301. Oranges, lemons, and limes, in packages of capacity of one and one-fourth cubic feet or less, thirteen cents per package * * *

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The court further observed:

So, also, grapes were made dutiable by the commercial package as they are bought and sold in the market, the package which the importer and the purchaser from him both uniformly recognize as the commercial unit. The article is sold by the barrel, the price including grapes, barrel, and sawdust, and the duty is imposed according to the same system; the understanding of the framers of the statute and of the importer being that the ordinary commercial package contains substantially the same amount of grapes, and this amount being a chief factor in determining the rate which shall be placed upon the package.

It was accordingly held by the court that no allowance should be made by way of deduction for the cork dust or sawdust.

We find no regulations of the Secretary of the Treasury which seem to be applicable to a case of this particular character, and are of opinion that the collector acted within his province in refusing to make any allowance. We accordingly overrule the protests and affirm the collector's decision in each instance.

(T. D. 32109—G. A. 7311.)

Validity of reappraisement.

1. EXAMINATION OF MERCHANDISE BY A GENERAL APPRAISER.

The collector of the port appealed from the action of the appraiser in the appraisement of certain machinery. Prior to this appeal and the hearing before the general appraiser the machinery had gone into consumption and was in use in various parts of the United States, hence not available for examination by the general appraiser. The general appraiser, upon due hearing, advanced the machinery 15 per cent, not having the machinery or samples thereof before him.

2. SAME.

Held, That a reappraisement proceeding under the provisions of subsection 13 of section 28 of the tariff act of 1909 is only invalidated by the failure of the general appraiser to have before him the merchandise in question, or sufficient or proper samples thereof, when it appears that such samples were necessary to a proper adjudication of the case; that is, necessary to enable the general appraiser to reach a right conclusion as to the foreign market value of the merchandise. Oelrichs *v.* United States (T. D. 32091), modifying Tilge *v.* United States (1 Ct. Cust. Appls., 462; T. D. 31507).

United States General Appraisers, New York, December 21, 1911.

In the matter of protests 455175, etc., of Ingo Maddans against the assessment of duty by the collector of customs at the port of New York.

Before Board 3 (WAITE, SOMERVILLE, and HAY, General Appraisers).

HAY, *General Appraiser:* In this case the validity of a reappraisement of certain machinery is called in question. There is apparently no dispute with reference to the facts. General Appraiser Fischer heard the case on reappraisement under the provisions of subsection 13 of section 28 of the tariff act of 1909, it having been duly appealed by the collector, who was dissatisfied with the appraise-

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ment of the merchandise by the local appraiser. Prior to the hearing of the case by General Appraiser Fischer, the machines in question had been disposed of by the importer to purchasers in different parts of the United States. The machines were therefore not before the general appraiser when he heard the case, and of course there were no samples, as the only samples of a machine must, of necessity, be the machine itself. The general appraiser heard the case over the protest of the importer, reaching the conclusion that the local appraiser had fixed too low a value on the machines. Having reached this conclusion he, as was his duty under the statute, reappraised the merchandise at a value 15 per cent higher than that fixed by the local appraiser. There is no question raised of irregularity in the proceedings other than that the general appraiser did not have before him the machines at the time he heard the case. There is no claim that the reappraisement was not in all respects fair and valid, except for this technical defect.

It is a fundamental principle of the law, upon which all govermental administration rests, that a public officer is presumed to have done his duty, and he who challenges any action of such official assumes the burden of showing that his action was incorrect.

General Appraiser Fischer is therefore presumed to have done his duty in this case. That is, it is presumed that, before he advanced the merchandise, he had in the hearing before him evidence sufficient to show that its foreign market value in the principal markets of the country from which it was imported was greater than its appraised value, and was the value which he found it to be. This the general appraiser could not have found if there had been any defect or flaw in the testimony necessary to prove the fact. In other words, if a physical examination of the machine was necessary to a determination as to its foreign market value, and the general appraiser did not have the opportunity of that examination, he could not, in the discharge of his duty, have advanced the value. It is therefore presumed that such examination was not necessary. Nothing is offered in this case to show that such an examination was necessary, or that any different or other conclusion could have, or would have, been reached by the general appraiser if he had had the machines before him for thorough inspection and examination. The defect, if any, in the reappraisement proceedings, therefore, is a technical one. By that it is meant one which, while in violation of the letter of the law, does not affect the substantial merits of the controversy. The sole question for inquiry is, therefore, Is it in violation of the direct letter of the law? The contention of the protestant is that it was in direct violation of the letter of the law in that, without having the machine before him, the General Appraiser had no jurisdiction of the case. In support of this contention they rely upon Tilge *v.* United States (1 Ct.

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Cust. Appls., 462; T. D. 31507) and Loeb *v.* United States (1 Ct. Cust. Appls., 385; T. D. 31479).

There is no provision of the law made by Congress which requires a general appraiser to have either the merchandise or samples of the merchandise before him when he hears and decides a reappraisement case under the provisions of subsection 13 of section 28. The only provision of law relative to the presence of the merchandise, so far as appraisement is concerned, is found in section 2901, Revised Statutes, which, in so far as pertinent, reads as follows:

SEC. 2901. The collector shall designate on the invoice at least one package of every invoice, and one package at least of every ten packages of merchandise, and a greater number should he or either of the appraisers deem it necessary, imported into such port, to be opened, examined, and appraised, and shall order the package so designated to the public stores for examination.

It was held in Tilge *v.* United States, *supra*, and is to be found in the *dicta* of Loeb *v.* United States, *supra*, that compliance with this provision of the law was a jurisdictional fact which was necessary to the appraisement and reappraisement of merchandise. That is, the full intendment and meaning of that decision was that, unless this provision was complied with and these packages or samples were before the general appraiser, his action in reappraising the merchandise was invalid. As before stated, except this provision, there is no other provision of law which requires the general appraiser to have either the merchandise or samples thereof before him at any time. In Oelrichs *v.* United States, decided by the Customs Court December 6, 1911 (T. D. 32091), we understand the Tilge case to have been modified in this respect. In the Oelrichs case it affirmatively appeared that the collector had not complied with this provision of section 2901. While the court held that this is mandatory, they held that the board, nevertheless, had jurisdiction of the case and that the reappraisement proceedings before the board, in other respects being regular and proper, were valid. We therefore now understand the law to be very much as announced by this board in several decisions in the past (Curnen's case, G. A. 5720—T. D. 25423; Harris's case, G. A. 6502—T. D. 27784; Loeb's case, G. A. 6738—T. D. 28849) that a reappraisement proceeding is only invalidated by the failure of the General Appraiser or the Board of General Appraisers to have before them the merchandise in question, or sufficient and proper samples thereof, when it appears that such merchandise or such samples were necessary to a proper adjudication of the case; that is, necessary to enable the general appraiser to reach a right conculsion as to the foreign-market value of the merchandise. Any other rule would render the reappraisement of merchandise by a general appraiser difficult and in many instances impossible and thereby defeat the ends of justice, as in the reappraisement of cattle that have been

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imported from bordering countries and are scattered over the range, and the reappraisement of perishable merchandise of various kinds, particularly of growing plants. There are many cases of reappraisement, too, where the presence of the merchandise before the general appraiser would be as utterly unnecessary and unhelpful as would be the physical presence of a railroad before a court in determining a question as to the validity of its rate under the interstate commerce law; as, for instance, where the sole question that arises upon the reappraisement proceeding is as to whether or not a certain commission paid to a commissionnaire should be deducted from the price of the merchandise to make market value, or the question as to whether the town wherein the merchandise was manufactured or the port from whence it was shipped is the place in which the market value should be ascertained.

The only other statutory provision which in any way bears upon the subject is the following language of subsection 10 of section 28 of the tariff act of 1909:

> By all reasonable ways and means in his or their power to ascertain, estimate, and appraise * * * the actual market value and wholesale price of the merchandise at the time of exportation to the United States.

Regarding this we said in Curnen's case, G. A. 5720 (T. D. 25423):

> A compliance with this provision of the law may or may not require an examination of the merchandise. The law presumes that the general appraiser and that the board of three general appraisers have used all reasonable ways and means in his and their power to ascertain the value of the merchandise before them, and unless it is shown that the goods were of that character that the mere examination by a nonexpert would have revealed their value, the failure to voluntarily examine these goods should not be held to be a failure to comply with this provision of the law. The general appraiser is not an expert, and in the very nature of things could not be an expert in the sense of knowing the character, quality, and value of goods at sight. There are but nine general appraisers, and it would be impossible that any one or all of them could be familiar with the character or the value of all the infinite varieties of merchandise that come into the ports of the United States. They are experts, if at all, only in the customs laws and the methods of their administration; they must, of necessity, determine values from such evidence as is before them; and, in a large majority of cases, the examination of the merchandise would be of no assistance whatever. It will not, therefore, be presumed that a general appraiser, or that a board of three general appraisers, called upon to pass upon the value of merchandise upon an appeal, have failed to adopt all reasonable ways and means in his or their power to ascertain, estimate, and appraise the actual market value or wholesale price of the merchandise that is before them simply from the fact that they have failed to examine part or all of the merchandise in question. If there is any presumption arising from their failure to examine the goods, it is that the goods were known to the general appraisers to be such that an examination of them would not afford them any help in determining the value.

We therefore reach the conclusion that in the case at bar the finding of General Appraiser Fischer, advancing the value of the merchandise, in the absence of proof to the contrary, established the fact that

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the presence of the merchandise before him was not necessary to a correct and adequate reappraisement thereof; that, following the Customs Court decision in Oelrichs *v.* United States (T. D. 32091), compliance with section 2901 is not essential to give the board jurisdiction in a reappraisement proceeding; that there is no other provision of law requiring a general appraiser in the reappraisement of merchandise to have before him either the merchandise or samples thereof; that hence such was not necessary in this case, and the reappraisement is therefore valid.

The protests are overruled.

(T. D. 32110.)

Abstracts of decisions of the Board of General Appraisers.

Board 1.—Sharretts, McClelland, and Chamberlain. *Board 2.*—Fischer, Howell, and Cooper. *Board 3.*—Waite, Somerville, and Hay.

BEFORE BOARD 1, DECEMBER 19, 1911.

No. 27404.—PROTESTS OVERRULED.—Protests 450886, etc., of Davies, Turner & Co., et al., and protests 376342, etc., of George Lueders & Co. et al. (New York). Opinions by McClelland, G. A.

Protests overruled for want of merit.

BEFORE BOARD 2, DECEMBER 19, 1911.

No. 27405.—EMBOSSED POST CARDS—PRINTED MATTER.—Protests 523147, etc., of Kronfeld, Saunders & Co. et al. (New York). Opinion by Fischer, G. A.

Protests sustained as to embossed post cards. Abstract 24233 (T. D. 31070) followed.

No. 27406.—PROTESTS OVERRULED.—Protests 528280-3828, etc., of Illinois Central Railroad Co. (New Orleans), and protests 501742, etc., of Francois Coste et al., protests 395470, etc., of C. F. Hubbs & Co. et al., and protests 409434, etc., of W. H. Stiner & Son (New York). Opinions by Fischer, G. A.

Protests overruled for want of merit.

No. 27407.—PROTESTS OVERRULED.—Protests 434791, etc., of Burr & Hardwick et al., protests 376186, etc., of D. S. Hesse & Bro. et al., protests 430695, etc., of Theodore Kauffeld et al., protests 475870, etc., of Levi, Sondheimer & Co. et al., protests 511561, etc., of A. & H. Veith et al. (New York), and protests 511215, etc., of Rosenthal-Sloan Millinery Co. (St. Louis). Opinions by Howell, G. A.

Protests overruled for want of merit.

No. 27408.—COTTON CLOTH—SUFFICIENCY OF PROTEST.—Protest 496747 of F. H. Shallus (Baltimore).

Cotton cloth classified under paragraph 318, tariff act of 1909, as exceeding 200 threads per square inch and 3½ square yards per pound was claimed to be dutiable under paragraph 317 of said act as not exceeding 200 threads per square inch, weighing between 4½ and 6 square yards per pound and valued at less than 12 cents per

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square yard. The appraisers admitted the cloth to be of the particulars alleged in the protest but that it exceeded 12 cents per square yard in value, and the collector contended that therefore the protest did not "distinctly and specifically" set forth the reason for the objection to the assessment.

COOPER, *General Appraiser:* Under this state of facts counsel for the Government contends that the protest should be overruled for failure to comply with the requirements of the administrative act, in that it does not "distinctly and specifically" set forth the reasons for the objection to the assessment.

We think this protest has distinctly and specifically brought to the mind of the collector the reason for the objection to the assessment. The only difference of opinion as to facts between the collector of customs and the importer is the count of threads per square inch, and this count is properly stated in the protest. The fact that after the importer had set forth in his protest all the necessary particulars of fact to bring to the mind of the collector the latter's error, he continued and stated the value of the goods incorrectly, and, therefore, as a conclusion, the wrong rate, does not invalidate the protest. The appraised value of the cloth is conclusive on both the collector and the importer, and the statement in the protest that the value of the cloth was less than 12 cents per square yard could not possibly have misled the collector, who had the invoice and entry, stating the correct value, before him.

This is in harmony with the decision of the United States Court of Customs Appeals in Carter *v.* United States (1 Ct. Cust. Appls., 64; T. D. 31033). It was there held that where cotton cloth was assessed as etamines under the act of 1897 it was sufficient to claim that it was dutiable as cotton cloth under paragraphs 304 to 309 of said act. The court said:

> The real matter of difference between the importer and the collector was that the latter assumed the goods to be etamines, whereas the importer claimed that they were dutiable as cotton cloths at the rate to be determined by the collector himself.

So here the only "matter of difference between the importer and the collector" is the count of threads per square inch, which was properly alleged in the protest, and it is therefore sufficient.

The protest is sustained and reliquidation will proceed at the rate of 6 cents per square yard.

No. 27409.—PROTESTS OVERRULED.—Protests 128591, etc., of Bach Bros. & Katzenstein et al., and protests 402254, etc., of Calhoun, Robbins & Co. et al (New York). Opinions by Cooper, G. A.

Protests overruled for want of merit.

BEFORE BOARD 3, DECEMBER 19, 1911.

No. 27410.—DUTIABLE VALUE—PRO FORMA INVOICE.—Protest 461522 of G. Luzzatti (New York). Opinion by Waite, G. A.

The merchandise was entered by means of a pro forma invoice and the appraiser's approval of the value was indorsed thereon. The collector assessed duty upon the higher value stated in the consular invoice. The claim of the importer that duty should have been assessed on the pro forma invoice value was sustained on the authority of United States *v.* Bennett (T. D. 31975).

No. 27411.—ASTILBE.—Protest 496460 of Storrs & Harrison Co. (Cleveland). Opinion by Waite, G. A.

Merchandise invoiced as "spirea" and classified as nursery stock under paragraph 264, tariff act of 1909, was held dutiable as astilbe (par. 263). Protest sustained.

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No. 27412.—PROTESTS OVERRULED.—Protest 520764 of National Foundry Co. (Cape Vincent), and protest 492936 of R. C. Chance's Sons (Philadelphia). Opinions by Waite, G. A..

Protests overruled for want of merit.

No. 27413.—PROTESTS OVERRULED.—Protest 433014 of United States Express Co. and protest 505362 of Robert B. Ways (Baltimore), and protests 324575, etc., of A. Fazio et al., and protests 518410, etc., of A. A. Salomon, jr., & Co. et al. (New York). Opinions by Somerville, G. A.

Protests overruled for want of merit.

No. 27414.—POWDERED TALC.—Protests 408619. etc., of T. S. Todd & Co. et al. (New York). Opinion by Hay, G. A.

Protests sustained as to powdered talc on the authority of Salomon *v.* United States (T. D. 31635).

No. 27415.—PROTESTS OVERRULED.—Protest 522917 of James Durkin (Salt Lake City). Opinion by Hay, G. A.

Protest overruled for want of merit.

BEFORE BOARD 1, DECEMBER 21, 1911.

No. 27416.—WILLOW BASKETS.—Protests 411271, etc., of P. L. Carbone et al. (Boston). Opinion by McClelland, G. A.

Protests sustained as to willow baskets on the authority of Brody *v.* United States (T. D. 31573).

No. 27417.—PROTESTS OVERRULED.—Protest 525387 of Robert B. Ways (Baltimore), protest 244472 of Codman & Hall Co. (Boston), protests 510607, etc., of Lederer, Strauss & Co. (Des Moines), protests 439965, etc., of Louis P. Dusenbury & Co., and protests 403191, etc., of Herskovitz & Roth et al. (New York), and protests 513711, etc., of P. McGraw Wool Co. (Pittsburgh). Opinions by McClelland, G. A.

Protests overruled for want of merit.

BEFORE BOARD 2, DECEMBER 21, 1911.

No. 27418.—POST CARDS.—Protests 286596, etc., of Strauss & Muller et al. (New York). Opinion by Fischer, G. A.

Protests sustained as to post cards. Ringk *v.* United States (164 Fed. Rep., 1021; T. D. 29037), United States *v.* Deutsch (178 Fed. Rep., 272; T. D. 30387), Rotograph *v.* United States (1 Ct. Cust. Appls., 82; T. D. 31106), and Abstract 24233 (T. D. 31070) followed.

No. 27419.—LACE PAPER.—Protest 398452 of Wurzburger & Hecht (New York). Opinion by Fischer, G. A.

Lace paper articles classified as manufactures of paper under paragraph 407, tariff act of 1897, were held dutiable as paper (par. 402), as claimed by the importers. G. A. 6895 (T. D. 29698) followed.

No. 27420.—CYLINDRICAL METAL CONTAINERS.—Protests 418628, etc., of C. G. Euler, and protests 440002, etc., of Hammill & Gillespie (New York), and protests 411224, etc., of Powers-Weightman-Rosengarten Co. (Philadelphia). Opinions by Fischer, G. A.

Protests sustained as to cylindrical metal containers on the authority of United States *v.* Braun (T. D. 31596).

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No. 27421.—Decalcomanias.—Protest 526565 of Palm Brothers Co. (New York). Opinion by Fischer, G. A.

Protest sustained as to decalcomanias. United States *v.* Borgfeldt (T. D. 31945) followed.

No. 27422.—Protests Overruled.—Protests 414188, etc., of F. H. Shallus et al. (Baltimore), protests 525120, etc., of O. Kaufman et al. (New York), and protests 349058, etc., of O. G. Hempstead & Son et al. (Philadelphia). Opinions by Fischer, G. A.

Protests overruled for want of merit.

No. 27423.—Artificial Horsehair—Cotton Yarn.—Protests 205447, etc., of Berlin & Trosky (New York). Opinion by Cooper, G. A.

Artificial horsehair classified as an unenumerated manufactured article under section 6, tariff act of 1897, or as silk yarn by similitude (par. 385) was held dutiable as cotton yarn (par. 302) by virtue of the similitude clause (sec. 7). Protests sustained on the authority of United States *v.* Eckstein (T. D. 32090).

Before Board 3, December 21, 1911.

No. 27424.—Hyacinth Bulbs.—Protests 481281, etc., of O. G. Hempstead & Son (Philadelphia). Opinion by Waite, G. A.

Protests sustained as to hyacinth bulbs. Breck *v.* United States (T. D. 31576) followed.

No. 27425.—Protests Overruled.—Protest 527258 of I. B. Mooshy (Cincinnati), and protest 527629 of J. Singer (Houston). Opinions by Waite, G. A.

Protests overruled for want of merit.

No. 27426.—Protests Overruled.—Protest 489730-36697 of Chapman & Smith Co. et al. (Chicago). Opinion by Somerville, G. A.

Protest overruled for want of merit.

No. 27427.—Granito.—Protest 527628 of R. Rossman Co. (Boston), and protests 525033, etc., of C. D. Jackson & Co. et al. (New York). Opinions by Hay, G. A.

Protests sustained as to granito. Rossman *v.* United States (1 Ct. Cust. Appls., 280; T. D. 31321) followed.

No. 27428.—Coverings of Specific-Duty or Free Goods.—Protests 401047, etc., of J. J. Buchey & Co. et al. (Philadelphia), and protest 418965 of W. Schade & Co. (St. Louis). Opinions by Hay, G. A.

Paper, cardboard, and pasteboard wrappings or containers of merchandise subject to specific duty or free of duty were held nondutiable, as claimed by the importers. United States *v.* Matagrin (1 Ct. Cust. Appls., 309; T. D. 31406) followed.

No. 27429.—Powdered Talc.—Protest 420073 of Powers-Weightman-Rosengarten Co. (Philadelphia). Opinion by Hay, G. A.

Protests sustained as to powdered talc. Salomon *v.* United States (T. D. 31635) followed.

No. 27430.—Protests Overruled.—Protests 526785, etc., of Jones, McDuffie & Stratton Co. et al., and protest 165292 of Oelrichs & Co. (Boston), and protest 526374 of Corsi, Zumstag & Co., protest 524024 of A. J. Dale et al., protest 520395 of New York & Cuba Mail Steamship Co., and protest 526096 of Poirier & Lindeman (New York). Opinions by Hay, G. A.

Protests overruled for want of merit.

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(T. D. 32111.)

Smokers' articles.

DALE *v.* UNITED STATES (No. 626).

LEATHER-COVERED PIPE AND CIGARETTE-HOLDER CASES.

Common knowledge and observation serve to convince that the importation is one of smokers' articles, and these are dutiable not as manufactures of leather but as falling within "all smokers' articles whatsoever," paragraph 475, tariff act of 1909.—Vandiver *v.* United States (1 Ct. Cust. Appls., 194; T. D. 31219); Mark Cross Co. *v.* United States (*Ibid.*, 377; T. D. 31457); Knauth *v.* United States (*Ibid.*, 334; T. D. 31432).

United States Court of Customs Appeals, December 19, 1911.

APPEAL from Board of United States General Appraisers, Abstract 24862 (T. D. 31316) and Abstract 25186 (T. D. 31450).

[Decision affirmed.]

McLaughlin, Russell, Coe & Sprague (*Edward P. Sharretts* of counsel) for appellant.

Wm. L. Wemple, Assistant Attorney General (*Wm. K. Payne*, Deputy Assistant Attorney General, on the brief), for the United States.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

DE VRIES, Judge, delivered the opinion of the court:

This is an appeal from a decision of the Board of General Appraisers wherein it held that the articles herein involved—to wit, leather-covered pipe cases and leather-covered cigarette-holder cases—were dutiable as "all smokers' articles whatsoever, not specially provided for," and not as "cases, made wholly of, or in chief value of leather, * * * not specially provided for." They were, therefore, held dutiable by the board under the provisions of paragraph 475 of the tariff act of 1909, rather than under the provisions of paragraph 452.

While this record is not free from error below, we are satisfied, after an examination of the entire record and the samples accompanying the same, that no such error has been made as would deprive the appellant of a substantial right in final judgment. What constitutes "smokers' articles," and the relation of the two paragraphs the subject of consideration, have heretofore been the subject of decision by this court.

In Vandiver *v.* United States (1 Ct. Cust. Appls., 194; T. D. 31219) a similar question arose. That case concerned cedar boxes of suitable size, plain and decorated, marked "cigars" and "cigarettes," and similar boxes unmarked, but fitted and chiefly used for the purposes of and by smokers, which were held properly dutiable as "smokers' articles."

In Mark Cross Co. *v.* United States (1 Ct. Cust. Appls., 377; T. D. 31457) this court held that the provisions of paragraph 475 for "all smokers' articles whatsoever" was more specific than the provision for "cases of leather" in paragraph 452. We said:

> The leather paragraph, however, provides for cases composed in chief value of leather—that is, for all such cases—and it therefore includes not only cigar and cigarette cases so composed, but also all other kinds of such leather cases. The smokers' paragraph provides for smokers' articles only, and would therefore include only such leather cases as are used by smokers—that is, the first paragraph provides for all cases

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composed in chief value of leather, the second provides only for such cases so composed as are used by smokers. Therefore, in so far as these two paragraphs respectively touch upon such leather cases, the first paragraph includes all, and the second only a part; the first is the genus and the second the species.

In Knauth *v.* United States (1 Ct. Cust. Appls., 334; T. D. 31432) the court, endeavoring to define under the language of earlier decisions and the statutes what constituted a smoker's article, said:

The phrase as used in the statute, "all smokers' articles whatsoever," is exceedingly comprehensive. The use of both words "all" and "whatsoever" seems to leave little doubt as to the intention of the legislature. * * *

The intensified form of the expression used, together with the far-reaching effect of the qualifying words stated, manifests to our mind a purpose on the part of the legislature to reach out into all branches of trade and commerce and to gather within the dutiable provisions of this paragraph everything used chiefly by smokers, in that pursuit and for that purpose, wherever else they may occur or within whatever other provisions of the tariff law the merchandise may be included.

In the light of these decisions, and that common knowledge and observation which is the experience of every one in every day life in cities and places where these goods are sold and used, convinces us beyond any peradventure of doubt that such articles as are the subject of decision here are reasonably included within the term "all smokers' articles whatsoever" as used in paragraph 475, and heretofore defined by this and other courts.

In this respect, the case is similar to Robertson *v.* Salomon (130 U.S., 412, 414), wherein the Supreme Court said:

Beyond the common knowledge which we have on this subject, very little evidence is necessary or can be produced. Nix *v.* Hedden (149 U. S., 304).

The decision of the Board of General Appraisers is *affirmed.*

(T. D. 32112.)

Teddy-bear muffs.

CARSON, PIRIE, SCOTT & CO. *v.* UNITED STATES (No. 684).

TEDDY-BEAR MUFFS—TOYS.

The articles, "Teddy bears," have the shape of dolls with heads representing bears; the testimony shows they are sold to and handled by toy dealers almost exclusively; they are not reasonably fit for any use except to amuse children; they are toys and are dutiable as such under paragraph 431, tariff act of 1909.—Illfelder *v.* United States (1 Ct. Cust. Appls., 109; T. D. 31115).

United States Court of Customs Appeals, December 19, 1911.

APPEAL from Board of United States General Appraisers, G. A. 7214 (T. D. 31540).

[Decision reversed.]

McLaughlin, Russell, Coe & Sprague (*Edward P. Sharretts* of counsel) for appellants.

Wm. L. Wemple, Assistant Attorney General (*Charles Duane Baker* on the brief), for the United States.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

DE VRIES, Judge, delivered the opinion of the court:

This appeal involves the dutiable classification of so-called "Teddy-bear muffs." They were assessed for dutiable purposes by the collector at the rate of 44 cents per pound and 60 per cent ad valorem as

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wool wearing apparel under the provisions of paragraph 382 of the tariff act of 1909, which reads:

382. On clothing, ready-made, and articles of wearing apparel of every description, including shawls whether knitted or woven, and knitted articles of every description made up or manufactured wholly or in part, felts not woven, and not specially provided for in this section, composed wholly or in part of wool, the duty per pound shall be four times the duty imposed by this section on one pound of unwashed woo of the first class, and in addition thereto sixty per centum ad valorem.

Appellants here, who were protestants below, maintained that they were toys within the language of paragraph 431 of the same act, which is as follows:

431. Dolls, and parts of dolls, doll heads, toy marbles of whatever materials composed, and all other toys, and parts of toys, not composed of china, porcelain, parian, bisque, earthen or stone ware, and not specially provided for in this section, thirty-five per centum ad valorem.

The articles are in the shape and form of so-called "Teddy bears" and range in size from 12 inches high and 7 inches wide to 14 inches high and 8 inches wide. One of the official samples is white and the other is of a tan color. While they are characterized "Teddy bears" they are in fact and in the shape and form of dolls with heads representing bears.

This court in Illfelder *v.* United States (1 Ct. Cust. Appls., 109; T. D. 31115) laid down a rule of decision as to what constituted a toy in the following language:

In common speech, and as popularly understood, a toy is essentially a plaything, something which is intended and designed for the amusement of children only, and which by its very nature and character is reasonably fitted for no other purpose. Although an article may be chiefly used for the amusement of children, if its nature and character are such that it is also reasonably fitted for the amusement of adults, or if it is reasonably capable of use for some practical purpose other than the amusement of children, it can not be classed as a toy unless it is affirmatively shown by the importer that it is so known and designated by the trade generally.

That definition in its pronouncement of essentials and their limitations, we think, is in complete accord with the theretofore adjudicated cases.

While the testimony in this record is scant and unsatisfactory there is sufficient, when taken in conjunction with the samples, to indicate the purpose and uses of the imported articles. If they are intended for a useful purpose that purpose is as a fur muff. In construction they are far short of such. They are made of an exceedingly poor quality of pile fabric which from the nature of its construction is not only a very poor representation of a fur or bear skin, and in strength and durable qualities would seem to permit of but little wear. That this was the intention of the manufacturers is further manifested by the fact that the articles are sewn together in what might be properly characterized little better than temporary construction.

In order to conserve the appearance of a doll or bear, the width is made so narrow that but little if any warmth could be afforded

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the hands of a child during cold weather. The muff aperture is made from side to side.

The uncontradicted testimony in the record is that these articles are sold to and handled by toy dealers almost if not exclusively; that when they are dealt in by department stores they are found in the toy department.

There is no testimony of trade use. The Board of General Appraisers was divided in its opinion and we are constrained to approve the opinion of the dissenting general appraiser, Chamberlain. It is conceded by all parties to the record that the articles are chiefly used for the amusement of children, but it is contended that they are also designed and used for the practical purposes of muffs. With the dissenting general appraiser we do not think they are reasonably fit for any other use than that of the amusement of children. Their size, construction, apparent durability, and every appearance, in our mind, conduces to this conclusion.

While they are incidentally useful, they are a plaything that can not with comfort be enjoyed except in seasons and in a manner that inevitably conduces in a slight measure to a useful purpose. This, however, we take as an incidental use growing out of the very nature of the article itself and necessitated by the character of the toy in order that it may be devoted to the amusement of children. The article is plainly so designed and constructed that while not in use as a muff it could be and probably is used as a doll. Its proportions, structure, and appearance are indeed more those of a doll than of a muff.

The decision of the board is *reversed*.

(T. D. 32113.)

Peeled melon seed.

UNITED STATES *v.* SHING SHUN & CO. (No. 699).

PEELED MELON SEED USED AS FOOD.

Melon seed which have been reduced in size by peeling, that have been roasted and salted for food, their germinating quality disappearing in these processes, are not to be deemed vegetables proper or as unmanufactured, but come within the category of manufactured articles and are dutiable as a nonenumerated manufacture under paragraph 480, tariff act of 1909.—United States *v.* Kauffman (84 Fed. Rep., 446).

United States Court of Customs Appeals, December 19, 1911.

APPEAL from Board of United States General Appraisers, Abstract 25572 (T. D. 31589).

[Decision reversed.]

Wm. L. Wemple, Assistant Attorney General (*Wm. K. Payne*, Deputy Assistant Attorney General, on the brief), for the United States.

Joseph G. Kammerlohr and *John Giblon Duffy* for appellees.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

DE VRIES, Judge, delivered the opinion of the court:

This importation was peeled melon seeds. We are here called upon to decide whether such merchandise may be properly classi-

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fied as a "vegetable, cut, sliced, or otherwise reduced in size," or "a vegetable, parched or roasted, or prepared in any way"; or, whether it is an unenumerated manufactured or unmanufactured article. The Board of General Appraisers held it dutiable as a nonenumerated unmanufactured article, and this is an appeal from that decision.

The facts in the case are exceedingly meager. There is no brief for the respondent, appellee. The testimony in the record, when read in conjunction with the return of the appraising officer at the port of San Francisco, whereat the merchandise was imported, shows that the merchandise consisted of watermelon seeds, the hulls of which have been peeled off, and the seeds have, therefore, been reduced in size.

The protestant alleges in his protest, however, that the merchandise consists of "watermelon seed meats salted and roasted, which are eaten by the Chinese as a relish and are not suitable for planting, as they will not germinate." While this is not testimony in the case, it may be taken in the nature of an admission against interest, where it is such, and be so considered by the court.

The fact that they are prepared for and eaten as a relish would seem to put them beyond the category of vegetables as that term is used in customs acts. They are cut, shelled, and dried, and are also parched or roasted; but they are not "vegetables" so treated, but "seeds" so cut, roasted, etc., an entirely distinct tariff entity. Paragraphs 252 and 266, act of 1909. They are at most the seed of a vegetable so far as derivation is concerned. Robertson *v.* Salomon (130 U. S., 412); Nix *v.* Hedden (149 U. S., 304).

We are impressed with the reasoning of the United States Circuit Court of Appeals for the Second Circuit in the case of United States *v.* Kauffman (84 Fed. Rep., 446), and that the words of the court there adopted are applicable here and in principle decisive of this case. The subject under consideration was hulled millet seeds. The question was whether they were dutiable as "seeds" or a manufactured article. The court said:

> The merchandise is millet pulp from which the hull has been removed, and therefore it will not germinate and can not be used for agricultural purposes. It has been destroyed as a "seed," according to the common understanding of the word or according to the meaning given to it by lexicographers, and has been removed by the removal of the hull to a different condition and to be used for different purposes. It is used largely, especially by persons of German birth, for food, as oatmeal is used, and it is also used for food for birds. Millet seed not hulled is not used for human food.

Based upon the facts as they appear and must be taken in this record, we think a melon seed which has been peeled, and thereby reduced in size, and roasted, whereby its germinating power has

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been destroyed, if it had not already been destroyed by the peeling, and salted, whereby it is prepared for immediate use as a food and so eaten, is clearly within the category of manufactured articles, and that this merchandise is, therefore, properly dutiable as a nonenumerated manufactured article.

The decision of the Board of General Appraisers is *reversed*.

(T. D. 32114.)

Amendment of section 11 of Department Circular No. 54 (1910), relative to reinsurance on engineering and construction contracts with the Government.

[Circular No. 73.]

TREASURY DEPARTMENT, *December 20, 1911.*

To bond-approving officers of the United States, and others concerned:

Section 11 of Department Circular No. 54 (1910) is hereby amended to read as follows:

No portion of any recognizance, stipulation, bond, or undertaking shall be included in determining the limitations herein prescribed which shall have been reinsured, at the time of execution and delivery of the original obligation, or within 20 days thereafter, in a company authorized to do business under the acts above referred to, within the limitations herein prescribed, or in such companies organized under the laws of the United States, or of any State, having a capital stock paid up in cash of not less than $250,000, or in such corporations of other countries as are licensed in any State of the United States to do a fidelity and surety business, and have a deposit capital or other assets in this country of not less than $250,000, available to holders in the United States of fidelity and surety policies: *Provided*, That all such companies, domestic or foreign, shall submit themselves to all the regulations of the Treasury Department applicable to certified companies, including such examination, at the companies' expense, as the Secretary of the Treasury may deem it necessary and proper to make. The limit of reinsurance which may be accepted from any such company on any one bond shall be determined and fixed by the Secretary of the Treasury, but shall not exceed in any case 10 per cent of the capital stock and net surplus of domestic companies, or 10 per cent of the deposit capital or other assets in the United States available to the holders in the United States of fidelity and surety policies of alien corporations. The Secretary of the Treasury reserves the right to refuse at any time to further approve or accept reinsurance from any of such companies if, in his judgment, such company does not afford the United States or the policy holders of such companies in the United States the protection contemplated by this regulation: *And provided further*, That hereafter reinsurance will not be accepted on any bond or other undertaking running to the Government whereon persons furnishing labor and material for the construction or repair of any public building or public work are given a right of action under the provisions of the act of Congress approved August 13, 1894 (vol. 28, Stat. L., p. 278), as amended by the act of February 24, 1905 (vol. 33, Stat. L., pp. 811–812).

FRANKLIN MACVEAGH, *Secretary.*

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(T. D. 32115.)

Drawback on ribbons.

Drawback on ribbons subjected to the process of flocking or printing, wire binding, tinsel edging, creping or embossing, by Wertheimer Bros., of New York City, and also on corsage ribbons manufactured by this firm with the use of imported silk and other ribbons.

TREASURY DEPARTMENT, *December 23, 1911.*

SIR: Drawback is hereby allowed under section 25 of the tariff act of August 5, 1909, and the regulations promulgated thereunder (T. D. 31695 of June 16, 1911), on the exportation of ribbons subjected to the processes of flocking or printing, wire binding, tinsel edging, creping or embossing, by Wertheimer Bros., of New York City, and also on corsage ribbons manufactured by this firm with the use of imported silk and other ribbons.

The allowance shall not exceed the quantity used as shown by a sworn abstract from the manufacturing records which shall be filed with each entry, no allowance being made for wastage, except in the case of creped ribbon, where such allowance may be made not to exceed 3 per cent of the exported quantity.

The manufacturers' sworn statement of November 28, 1911, together with samples, is herewith inclosed for filing in your office

Respectfully, JAMES F. CURTIS,
(91382.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 32116.)

Drawback on toilet preparations.

Drawback on talcum powder manufactured by J. B. Williams Co., of Glastonbury, Conn., with the use of imported talc, and toilet waters and brilliantine manufactured by the same company with the use of domestic tax-paid alcohol.

TREASURY DEPARTMENT, *December 23, 1911.*

SIR: Drawback is hereby allowed under section 25 of the tariff act of August 5, 1909, and the regulations promulgated thereunder (T. D. 31695 of June 16, 1911), on talcum powder manufactured by the J. B. Williams Co., of Glastonbury, Conn., with the use of imported talc, and toilet waters and brilliantine manufactured by the same company with the use of domestic tax-paid alcohol.

The allowance in the case of the talcum powder shall not exceed the quantities specified in the manufacturers' sworn statement, dated November 24, 1911, transmitted herewith for filing in your office. In the case of the toilet waters and the brilliantine the quantity of domestic tax-paid alcohol shall not exceed the quantity contained in

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the exported article, with an additional 2 per cent of such quantity to compensate for wastage. An allowance for wastage in the case of the talcum powder may be made not to exceed 1 per cent of the imported talc contained therein.

Respectfully, JAMES F. CURTIS,
(91591.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *Boston, Mass.*

(T. D. 32117.)

Wood pulp—Printing paper.

Instructions in T. D. 31772 relative to wood pulp and printing paper produced from wood cut on the Crown lands in the Province of Ontario extended to include such products of wood cut on the Indian lands in the same Province.

TREASURY DEPARTMENT, *December 27, 1911.*

To collectors of customs and others concerned:

The department is in receipt, through the Secretary of State, of a copy of the order in council of the Government of the Dominion of Canada, dated April 19, 1901, which in effect prohibits the exportation for use in the manufacture of wood pulp of pine, spruce, or other soft woods cut on Indian lands or Indian reserves in the Province of Ontario.

The instructions contained in T. D. 31772 of July 26, 1911, relative to wood pulp and printing paper produced from wood cut on the Crown lands in the Province of Ontario are, therefore, hereby extended to include such products of wood cut on Indian lands or Indian reserves in that Province.

The Secretary of State has this day been requested to instruct the American consular officers concerned to certify on invoices the origin of the wood from which the products exported were manufactured.

This decision will take effect 30 days after date, as provided in T. D. 28627 of December 18, 1907.

JAMES F. CURTIS, *Assistant Secretary.*

(T. D. 32118.)

Drawback on photographs.

Drawback on enlarged photographs manufactured by the Horne Copying Co., of Chicago, Ill., with the use of imported Steinbach paper.

TREASURY DEPARTMENT, *December 28, 1911.*

SIR: The department's regulations of November 9, 1911 (T. D. 31997), providing for the allowance of drawback on portraits manu-

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factured by the Pioneer Portrait & Picture Frame Co., of Chicago, Ill., with the use of imported Steinbach paper, are hereby extended, so far as applicable, to cover the exportation of enlarged photographs manufactured by the Horne Copying Co., of Chicago, with the use of imported Steinbach paper, in accordance with the sworn statement dated October 10, 1911, transmitted herewith for filing in your office.

In estimating the drawback, the following weights for 100 sheets of the sizes given shall be taken, with an addition of 2 per cent to compensate for loss in cutting the paper to sizes:

	Pounds per 100 sheets.
8 by 10 inches	1.09
10 by 12 inches	1.649
11 by 14 inches	2.083
16 by 20 inches	4.088
20 by 24 inches	6.76

Respectfully, JAMES F. CURTIS,
(92116.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *Chicago, Ill.*

(T. D. 32119.)

Drawback on tinctures, essences, and extracts.

Drawback on tinctures, essences, and extracts manufactured by George Lueders & Co., of New York, from imported and domestic alcohol.

TREASURY DEPARTMENT, *December 28, 1911.*

SIR: Drawback is hereby allowed under section 25 of the tariff act of August 5, 1909, and the regulations promulgated thereunder (T. D. 31695 of June 16, 1911), on the exportation of tinctures, essences, and extracts manufactured by George Lueders & Co., of New York, from inported and domestic tax-paid alcohol.

The allowance shall not exceed the quantities shown in the sworn statement and schedule, dated August 21, 1911, transmitted herewith for filing in your office.

Such of the articles manufactured as may be classified as toilet and medicinal preparations may be manufactured from domestic tax-paid alcohol with benefit of drawback of the internal-revenue tax paid, but such articles as can not be so classified must be manufactured from imported alcohol in order to be entitled to drawback.

Respectfully, JAMES F. CURTIS,
(92068.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 32120.)

Drawback on dyed artificial silk.

Drawback on artificial silk imported in the gray and dyed or dyed and spooled by Ludwig Littauer, of New York.

TREASURY DEPARTMENT, *December 28, 1911.*

SIR: Drawback is hereby allowed under section 25 of the tariff act of August 5, 1909, and the regulations promulgated thereunder (T. D. 31695 of June 16, 1911), on the exportation of dyed artificial silk spooled or in skeins manufactured by Ludwig Littauer, of New York, from imported artificial silk in the gray.

A manufacturing record should be kept showing the exact weight of each exportation of silk, and a sworn abstract from this record should be filed with each entry.

The allowance shall not exceed the net weight of the exported silk, there being no wastage.

The manufacturer's sworn statement, dated November 11, 1911, is transmitted herewith for filing in your office.

Respectfully, JAMES F. CURTIS,
(65456.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 32121.)

Bottles and jars containing ad valorem merchandise.

Appeal directed from the decision of the Board of United States General Appraisers, G. A. 7294 (T. D. 31986), involving the classification of bottles and jars containing merchandise subject to ad valorem rates of duty.

TREASURY DEPARTMENT, *December 14, 1911.*

SIR: The department is in receipt of your letter of November 25, 1911, inviting attention to the decision of the Board of United States General Appraisers, G. A. 7294 (T. D. 31986), construing the provisions of subsection 18 of section 28 of the tariff act relating to the rates of duty imposed on bottles and jars used as the containers of merchandise subject to ad valorem rates of duty.

In view of the importance of the issue, you are hereby requested to file, in the name of the Secretary of the Treasury, an application with the United States Court of Customs Appeals for a review of the said decision in accordance with the provisions of subsection 29 of section 28 of the tariff act of August 5, 1909.

Respectfully, JAMES F. CURTIS,
(92674.) *Assistant Secretary.*

Hon. WM. L. WEMPLE,
Assistant Attorney General, New York.

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(T. D. 32122.)

Scrap iron—Junk.

Appeal directed from G. A. 7305 (T. D. 32069), holding certain old broken-up iron mill shafts, fit for remanufacture by rerolling or hammering, to be junk entitled to free entry under paragraph 600, act of August 5, 1909.

TREASURY DEPARTMENT, *December 29, 1911.*

SIR: The department is in receipt of a decision of the Board of United States General Appraisers of December 4, 1911, G. A. 7305 (T. D. 32069), involving the classification of certain old, broken-up bull shafts, which the board held were entitled to admission free of duty under paragraph 600, as "junk, old."

As the issue is an important one, you are requested to file, in the name of the Secretary of the Treasury, an application with the United States Court of Customs Appeals for a review of the said decision, in accordance with the provisions of subsection 29 of section 28 of the tariff act of August 5, 1909.

Respectfully, JAMES F. CURTIS,
(68006.) *Assistant Secretary.*

Hon. WM. L. WEMPLE,
Assistant Attorney General, New York.

(T. D. 32123—G. A. 7312.)

Spun silk yarn.

SPUN SILK YARN ON BOBBINS.

Spun silk yarn in the gray, wound upon cylindrical paper tubes measuring about 4⅝ inches in length and having a uniform diameter of about one-half of an inch, which tubes are recognized in trade under the general term "bobbins," is dutiable as spun silk yarn "on bobbins" rather than as spun silk yarn in "skeins, warps, or cops," according to its value per pound, condition, and number, under the provisions of paragraph 397, tariff act of 1909.

United States General Appraisers, New York, December 22, 1911.

In the matter of protests 455374, etc., of Hensel, Bruckmann & Lorbacher against the assessment of duty by the collector of customs at the port of New York.

Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers).

HOWELL, *General Appraiser:* The merchandise in question, which is concededly dutiable under paragraph 397, tariff act of 1909, consists of spun silk yarn in the gray valued at exceeding $1 per pound, advanced beyond the condition of singles by grouping or twisting two or more yarns together. The only issue in the case is whether the yarn is to be classified as "on bobbins," which is the way it was

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assessed by the collector, or whether it is to be classified as "in skeins, warps, or cops," as claimed by the importers. The yarn is wound on cylindrical paper tubes about 4⅝ inches in length and having a uniform diameter of about one-half of an inch. The importers contend that these tubes are not bobbins, and they claim that the yarn is put up in this form rather than in skeins to prevent the waste which occurs by the yarn becoming tangled when in skeins. The Government, on the other hand, contends that these paper tubes are in fact bobbins, that they are so recognized in the trade, and that the yarn is put up in this form to prepare it for use in weaving and knitting processes without rewinding.

It appears from the testimony and the illustrative exhibits introduced in evidence in this case that there are in trade and commerce a great variety of forms made of various materials upon which spun silk yarn is wound, which are recognized in the silk trade under the general designation of "bobbins." The forms are made of wood, pasteboard, or other materials, in various sizes and shapes, and are known as "shuttle bobbins" or "quills," "ribbon shuttle bobbins" or "splines," "tubular bobbins," "cone bobbins," "paper bobbins" or "tubes," etc., the distinguishing name apparently being derived from the shape of the article or the use to which it is to be put.

It may be here observed that the form upon which the yarn in this case is wound differs in size and shape from the well-recognized form known as a "cop."

The testimony shows that as "bobbins" is a general term covering a great variety of articles, the trade has found it necessary to use words of description in connection with the general term in order to identify the particular style of bobbin desired, and, according to the testimony, the merchandise before us would be known as spun silk yarn on tubes or tubular bobbins. The article upon which the yarn is wound is recognized in trade under the general term "bobbins," and has been given a more specific trade name solely for the purpose of distinguishing it from other articles of the same class.

We think the case falls within the principle repeatedly enunciated by the courts that a word used in a tariff act may be susceptible of a trade meaning as designating a special group of articles, although each article in the group is always bought and sold by its specific trade name and none is bought and sold by the group designation. *In re* Herrman (56 Fed. Rep., 477); Drew *v.* Grinnell (115 U. S., 477); Loewenthal *v.* United States (2 Ct. Cust. Appls., —; T. D. 31592). But if we admit for purposes of argument that the yarn in this case is not on bobbins, it does not follow that the protests are to be sustained, for the importers have not shown that the yarn is in any of the other forms mentioned in the paragraph under which they make their

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claim, which it was incumbent upon them to do in order to succeed in their contention. Sidenberg *v.* Robertson (41 Fed. Rep., 763).

The yarn is not in "skeins, warps, or cops," which is the language of the provision on which the importers rely. There is no *eo nomine* provision for "spun silk yarn on tubes," and therefore, even if the merchandise before us is sold by that specific trade name and it is also known in trade and commerce as "spun silk yarn on bobbins," it is dutiable as such under the specific provision therefor in paragraph 397.

The protests are accordingly overruled and the decision of the collector in each case is affirmed.

(T. D. 32124—G. A. 7313.)

Lithographed photo frames.

The provision in paragraph 412, tariff act of 1909, for "pictures * * * and other articles, composed wholly or in chief value of paper, lithographically printed in whole or in part," is not to be limited to articles in chief value of lithographically printed paper, but includes photograph frames in chief value of paper, if bearing lithographic printing.

United States General Appraisers, New York, December 22, 1911.

In the matter of protests 415561, etc., of Adolph Strauss & Co. against the assessment of duty by the collector of customs at the port of New York.

Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers).

FISCHER, *General Appraiser:* The merchandise involved in these cases is photo frames. These frames for pictures are made of paper and paper boards cut out in various shapes and styles. The front of the frame is supplied with the glass usual to a picture frame and which covers the pocket in which a photograph is to be inserted; and surrounding this glass the frame is made up of a mounted lithographic print. The component of chief value is conceded to be paper, and the importers claim that the merchandise is dutiable at 35 per cent ad valorem under paragraph 420, tariff act of 1909, as manufactures of paper not specially provided for.

The collector assessed the merchandise for duty at 6 cents per pound under paragraph 412, the pertinent provisions of which are as follows:

Pictures, calendars, cards, labels, flaps, cigar bands, placards, and other articles, composed wholly or in chief value of paper, lithographically printed in whole or in part from stone, metal, or material other than gelatin * * * shall pay duty at the following rates: * * * exceeding twenty one-thousandths of one inch in thickness, six cents per pound: *Provided*, That in the case of articles hereinbefore specified the thickness which shall determine the rate of duty to be imposed shall be that of the thinnest material found in the article, but for the purposes of this paragraph the thick-

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ness of lithographs mounted or pasted upon paper, cardboard, or other material, shall be the combined thickness of the lithograph and the foundation on which it is mounted or pasted.

The lithographic design or print in these articles is shown to have been printed upon a separate sheet of thin paper, which, after printing, is mounted or pasted to pasteboard, and when cut, embossed, and shaped forms the front of the photo frame. As the lithographic print so mounted measured over twenty one-thousandths of 1 inch in thickness, the collector applied the applicable rate (6 cents per pound), and in fact no question is raised that if assessable under paragraph 412, the rate of duty so assessed is not the proper one. The importers contend that the paragraph applies only to articles made wholly or in chief value of lithographically printed paper, and not to articles which are in chief value of nonlithographed paper. They have offered evidence to show that the thin paper lithographically printed is not the chief value in the completed article. We believe the articles here in question are of the kind specified in paragraph 412, and that they are assessable as returned within the provisions of that paragraph.

If the paragraph does not cover articles in chief value of paper when made in part of lithographs, then the provisions can not apply to the very class of things which Congress specified, to wit, articles in chief value of paper made in part of lithographs the rate of duty upon which is conditioned upon the combined thickness of such prints and the foundation upon which they are pasted. If the importers' claim be tenable, then the paragraph which provides for lithographs and for articles made in part of litho prints would have to be limited in direct opposition to the express terms of that paragraph.

The history of litigation which brought about the enactment of the provisions now found in paragraph 412, covering the products of lithographic printing, clearly proves that Congress meant to cover such articles as those before us in these cases. Mention may be made of ruling in G. A. 4959 (T. D. 23169), of the decisions of the Circuit Court for the Southern District of New York in Knauth *v.* United States (155 Fed. Rep., 144; T. D. 28184) and in Fuld *v.* United States (138 Fed. Rep., 973; T. D. 26196). These rulings are conflicting and were called to the attention of Congress, and resulted in the framing of paragraph 412, tariff act of 1909. It is believed that there can be no question that all these fancy lithographed goods, such as photo frames, folding pictures, fancy calendars, transparencies, etc., when in chief value of paper, are comprised in the class of merchandise included in paragraph 412.

The protests must be overruled and the decisions of the collector affirmed.

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(T. D. 32125—G. A. 7314.)

Plateaux.

Flat, circular hat forms called "plateaux," some of which are composed of straw and others of manila hemp braids, and which only require to be blocked or otherwise shaped by the milliner to become completed hats, are properly dutiable at the rate of 35 per cent ad valorem under the provision in paragraph 422, tariff act of 1909, for "hats, bonnets, and hoods composed wholly or in chief value of straw * * * or manila hemp, whether wholly or partly manufactured, but not trimmed."—Schiff *v.* United States, decided by the Court of Customs Appeals (T. D. 31634), cited and followed.

United States General Appraisers, New York, December 30, 1911.

In the matter of protest 484835 of Olivier & Co. against the assessment of duty by the collector of customs at the port of New York.

Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers; COOPER, G. A., absent).

HOWELL, *General Appraiser:* The merchandise in question consists of flat, circular hat forms, called "plateaux," which only require to be blocked or otherwise shaped by the milliner to become completed hats. Some of them are composed of straw and others are composed of manila hemp braids. They were returned by the appraiser as "untrimmed straw hats" and "untrimmed manila hemp braid hats," respectively, and were assessed for duty by the collector at the rate of 35 per cent ad valorem under the provision in paragraph 422, tariff act of 1909, for hats of straw, etc., whether wholly or partly manufactured, but not trimmed, and are claimed to be dutiable under said paragraph at 15 or 20 per cent ad valorem under the provision therein for braids, plaits, laces, etc. The paragraph in question reads as follows:

422. Braids, plaits, laces, and willow sheets or squares, composed wholly or in chief value of straw, chip, grass, palm leaf, willow, osier, rattan, real horsehair, cuba bark, or manila hemp, suitable for making or ornamenting hats, bonnets, or hoods, not bleached, dyed, colored, or stained, fifteen per centum ad valorem; if bleached, dyed, colored, or stained, twenty per centum ad valorem; hats, bonnets, and hoods composed wholly or in chief value of straw, chip, grass, palm leaf, willow, osier, rattan, cuba bark, or manila hemp, whether wholly or partly manufactured, but not trimmed, thirty-five per centum ad valorem; if trimmed, fifty per centum ad valorem. But the terms "grass" and "straw" shall be understood to mean these substances in their natural form and structure, and not the separated fiber thereof.

This paragraph is substantially the same as the corresponding paragraph (409) in the tariff act of 1897. It is true that the provisions of the paragraph in the present act have been broadened so as to bring within its scope certain articles which were not embraced within the provisions of the corresponding paragraph in the act of 1897, but this change in the law in no way affects the issue in this case.

Under the act of 1897 this board held straw plateaux to be dutiable as hats composed of straw, partly manufactured and untrimmed.

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In re Schiff, G. A. 6481 (T. D. 27718). On appeal this decision was affirmed by the Court of Customs Appeals in Schiff *v.* United States, reported in T. D. 31634.

In the case at bar the importers have attempted to prove that plateaux fall within the class of articles known commercially as "plaits," and that the term "plateaux" is merely a more specific trade name given to the articles to distinguish them from other articles in the same group. We think the testimony falls far short of sustaining this view. All of the witnesses on both sides agree that the goods are bought and sold under the specific name "plateaux," and while some of the witnesses say that the goods fall within the class of articles known in the trade as "plaits," the majority of them do not know the articles under that term.

In United States *v.* Bacharach (92 Fed. Rep., 990) the Circuit Court of Appeals for the Second Circuit, in passing upon similar articles, held that "they were not braids or plaits of straw in a commercial sense, according to the testimony." That case was decided in March, 1899, and the testimony in the case before us does not show that there has been any change in the commercial designation of these articles since that date. On the contrary, the testimony now adduced, in our opinion, tends to confirm the conclusion there reached that the goods are not known commercially as plaits.

Following the decision of the Court of Customs Appeals in the Schiff case, *supra*, we hold that the goods were properly assessed for duty.

The protest is accordingly overruled and the decision of the collector is affirmed.

(T. D. 32126.)

Abstracts of decisions of the Board of General Appraisers.

Board 1—Sharretts, McClelland, and Chamberlain. *Board 2*—Fischer, Howell, and Cooper. *Board 3*—Waite, Somerville, and Hay.

BEFORE BOARD 1, DECEMBER 22, 1911.

No. 27431.—APRON LEATHER.—Protest 440372 of Fleitmann & Co. (New York). Opinion by McClelland, G. A.

Protest sustained as to apron leather on the authority of United States *v.* Richards (1 Ct. Cust. Appls., 537; T. D. 31548).

No. 27432.—PROTESTS OVERRULED.—Protests 471059-36002, etc., of American Express Co. et al., and protests 507972-37605, etc., of Herman H. Hettler Lumber Co. et al. (Chicago), protests 511670, etc., of Joseph Lazarus Co. et al. (Cincinnati), protest 492663 of L. M. Blumstein, protests 513745, etc., of R. L. Cochran et al., protest 454481 of Germain, Hoffbauer & Helm Co., and protests 524203, etc., of Littauer Bros. et al. (New York), protests 201589, etc., of M. Rice & Co. et al. (Philadelphia), protests 488970, etc., of Werner-Jenkinson Co. et al. (St. Louis), and protests 519419, etc., of A. Bernauer (San Francisco). Opinions by McClelland, G. A.

Protests overruled for want of merit.

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BEFORE BOARD 2, DECEMBER 22, 1911.

No. 27433.—COVERINGS OF SPECIFIC-DUTY GOODS.—Protest 528776 of M. J. Corbett & Co. (New York). Opinion by Fischer, G. A.

Protest sustained as to paper wrappings and coverings of goods subject to specific duty. United States *v.* Matagrin (1 Ct. Cust. Appls., 309; T. D. 31406) followed.

No. 27434.—MEAT-SLICING MACHINES—MACHINE TOOLS.—Protests 447207-34646, etc., of Gallagher & Ascher et al. (Chicago and Baltimore). Opinion by Fischer, G. A.

The articles in question consisted of machines used in butcher shops and restaurants for slicing meat. In operation the meat is affixed to a moving platform by means of a clamp, and by turning the hand-power wheel the meat moves forward to a revolving circular disk-shaped knife which cuts the meat to the required thickness. The machines were classified as manufactures of metal under paragraph 199, tariff act of 1909, and claimed to be dutiable as machine tools (par. 197). Protests overruled on the authority of Sears, Roebuck & Co. *v.* United States (T. D. 32055).

No. 27435.—ARTIFICIAL HORSEHAIR—COTTON YARN.—Protests 209590, etc., of J. Meyer & Co. et al. (New York). Opinion by Cooper, G. A.

Protests sustained as to artificial horsehair. United States *v.* Eckstein (T. D. 32090) followed.

No. 27436.—PROTESTS ABANDONED.—Protests 525594, etc., of Bardwil Bros. et al. (New York). Opinion by Cooper G. A.

Protests abandoned.

BEFORE BOARD 3, DECEMBER 22, 1911.

No. 27437.—PROTESTS OVERRULED.—Protests 505241, etc., of Park & Tilford et al. (New York), and protests 523781, etc., of Chee Chong & Co. et al. (San Francisco). Opinions by Waite, G. A..

Protests overruled for want of merit.

No. 27438.—MEASUREMENT OF ALMERIA GRAPES.—Protests 424068, etc., of Maynard & Child et al. (New York). Opinion by Somerville, G. A.

Protests sustained as to the measurement of barrels containing Almeria grapes. G. A. 7030 (T. D. 30664).

No. 27439.—STILL WINE—PERCENTAGE OF ALCOHOL.—Protest 515807 of B. F. Vandegrift & Co. (Philadelphia).

The question was whether certain still wine classified under paragraph 307, tariff act of 1909, was dutiable as containing more than 14 per cent of alcohol, or as containing less than that amount. The tests made in accordance with the regulations of the Secretary of the Treasury showed an alcoholic content varying from 14.43 to 14.75 per cent.

SOMERVILLE, *General Appraiser:* * * * In the case of United States *v.* Lueder (154 Fed. Rep., 1; T. D. 27918) it was held that sugar drainings which tested 56.025 degrees were properly classified as testing over 56 degrees by the polariscope, and that the fraction could not be disregarded in making the test.

The importers have offered to prove that this wine is not a fortified wine, but a dry or natural wine; that it is a class of wine grown in southern Italy, particularly Sicily, which under certain favorable climatic conditions at times contains over 14 per cent

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of alcohol, because of an excess of sugar in the grape. In other words, they offered to prove that this class of wine, when the climatic conditions are not favorable, contains less than 14 per cent of alcohol. In our judgment this testimony was irrelevant and immaterial, and, being objected to by Government counsel, is excluded. The simple question to be decided by the board is what is the percentage of alcohol contained in this particular wine as ascertained under regulations of the Secretary of the Treasury. The protest is overruled. * * *

No. 27440.—PROTESTS OVERRULED.—Protests 420802, etc., of McLillan & Brigham Co. et al. (Boston), protests 368257, etc., of Reiss & Brady et al., and protests 428341, etc., of Thomsen & Co. et al. (New York), protests 359804, etc., of American Mercantile Co., and protest 414863, of Yick Sang Tong & Co. (San Francisco). Opinions by Somerville, G. A.

Protests overruled for want of merit.

No. 27441.—TAM O'SHANTER STONES—WATER OF AYR STONES.—Protests 526700, etc., of Sussfeld, Lorsch & Co. et al. (New York). Opinion by Hay, G. A.

Tam O'Shanter and Water of Ayr stones, classified as articles composed of earthy or mineral substances under paragraph 95, tariff act of 1909, were held dutiable as unenumerated manufactured articles (par. 480), as claimed by the importers.

No. 27442.—COVERINGS OF SPECIFIC-DUTY AND FREE GOODS.—Protests 421574–32499, etc., of International Forwarding Co. et al. (Chicago). Opinion by Hay, G. A.

Protests sustained as to paper wrappings or coverings of merchandise subject to specific duty or free of duty. United States *v.* Matagrin (1 Ct. Cust. Appls., 309; T. D. 31406) followed.

No. 27443.—PROTESTS OVERRULED.—Protest 524759 of Allen-Day Co. (New York). Opinion by Hay, G. A.

Protest overruled for want of merit.

BEFORE BOARD 1, DECEMBER 26, 1911.

No. 27444.—WILLOW BASKETS.—Protests 450324, etc., of American Import Co. et al. (San Francisco). Opinion by McClelland, G. A.

Protests sustained as to willow baskets. Brody *v.* United States (T. D. 31573) followed.

BEFORE BOARD 2, DECEMBER 26, 1911.

No. 27445.—CYLINDRICAL METAL CONTAINERS.—Protests 528296, etc., of Amerman & Patterson et al. (New York). Opinion by Fischer, G. A.

Protests sustained as to cylindrical metal containers of pyrogallic acid, permanganate of potash, carbolic-acid crystals, bleaching powder, caustic potash, chloride of calcium, saffron, and the following oils: Anise, cod liver, caraway, cassia, juniper, lavender, lemon, neroli, olive, orange, rosemary, and thyme. United States *v.* Garramone (T. D. 31577) and United States *v.* Braun (T. D. 31596) followed.

No. 27446.—PROTESTS ABANDONED.—Protests 245587, etc., of E. A. Morrison & Co. et al. (New York). Opinion by Howell, G. A.

Protests abandoned.

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BEFORE BOARD 3, DECEMBER 26, 1911.

No. 27447.—COVERINGS OF SPECIFIC-DUTY OR FREE GOODS.—Protests 413363, etc., of Continental Forwarding Co. et al. (New York), and protests 497619, etc., of Wing Hing Shing Co. et al. (San Francisco). Opinions by Hay, G. A.

Paper, cardboard, and pasteboard wrappings or containers of merchandise subject to specific duty or free of duty were held nondutiable, as claimed by the importers. United States *v.* Matagrin (1 Ct. Cust. Appls., 309; T. D. 31406) followed.

No. 27448.—PROTESTS OVERRULED.—Protests 505807, etc., of Reiss & Brady et al. (New York). Opinion by Waite, G. A.

Protests overruled for want of merit.

BEFORE BOARD 1, DECEMBER 27, 1911.

No. 27449.—WILLOW BASKETS.—Protests 481491, etc., of R. F. Downing & Co. et al. (New York), protest 516643 of F. B. Vandegrift & Co. (Philadelphia), and protest 493760 of Sing Fat Co. (San Francisco). Opinions by McClelland, G. A.

Protests sustained as to willow baskets on the authority of Brody *v.* United States (T. D. 31573).

No. 27450.—TREE ORNAMENTS OF GLASS—TOYS.—Protest 458735-35214 of Butler Bros. (Chicago). Opinion by McClelland, G. A.

Tree ornaments composed of glass and made in the shape of fruit, which were classified as artificial fruit under paragraph 438, tariff act of 1909, were held dutiable as toys (par. 431), as claimed by the importers. Abstract 24253 (T. D. 31070) followed.

No. 27451.—SOAP.—Protest 449748 of Pagan Lopez & Co. (San Juan). Opinion by McClelland, G. A.

Soap reported by the chemist to have been made from cocoanut and other oil, which was classified as castile soap under paragraph 69, tariff act of 1909, was held dutiable as soap not specially provided for, under the same paragraph. Protest sustained on the authority of Abstract 23422 (T. D. 30667) and Abstract 24620 (T. D. 31236).

No. 27452.—FURS.—Protest 528690 of Aitken, Son & Co. (New York). Opinion by McClelland, G. A.

Pieces of felt and beaver strips classified as fur wearing apparel under paragraph 439, tariff act of 1909, were held dutiable as furs prepared for use as material, under the same paragraph, the appraiser having reported that they would now be so returned.

No. 27453.—SAWDUST—WASTE.—Protests 510681, etc., of Badische Co. et al. (New York). Opinion by McClelland, G. A.

Protests sustained as to sawdust. Abstract 26789 (T. D. 31912) followed.

No. 27454.—LEATHER GLOVES.—Protests 403940, etc., and 507321, etc., of A. C. Hartmann (New York). Opinions by McClelland, G. A.

Protests sustained as to stitched leather gloves on the authority of United States *v.* La Fetra (178 Fed. Rep., 1006; T. D. 30471).

No. 27455.—NATURAL FRUIT OIL—ESSENTIAL OIL.—Protests 406123, etc., of Pritchard, Verkruzen & Co. et al. (New York). Opinion by McClelland, G.A.

Protests sustained as to natural fruit oil. G. A. 7239 (T. D. 31718) followed.

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No. 27456.—Coverings of Specific-Duty Goods.—Protest 516334 of Denver Dry Goods Co. (Denver), and protest 495190 of Tootle-Campbell Dry Goods Co. (St. Joseph). Opinions by McClelland, G. A.

Paper, cardboard, and pasteboard wrappings or containers of merchandise subject to specific duty were held nondutiable, as claimed by the importers. United States *v.* Matagrin (1 Ct. Cust. Appls., 309; T. D. 31406) followed.

No. 27457.—Protests Overruled.—Protest 524572 of American Express Co.; protests 411274, etc., of Jordan-Marsh Co.; and protest 522899 of Henry Siegel Co. (Boston); protests 452526-35162, etc., of American Express Co. et al.; and protests 471143-35778, etc., of Wilson Bros. et al. (Chicago); protests 412876, etc., of Austin, Nichols & Co. et al.; protests 437415, etc., of George E. Evans Co.; and protest 505895 of G. W. Sheldon & Co. (New York); and protests 435955, etc., of B. Blumenthal & Co. (San Francisco). Opinions by McClelland, G. A.

Protests overruled for want of merit.

Before Board 2, December 27, 1911.

No. 27458.—Embossed Post Cards—Printed Matter.—Protest 558119 of W. H. Stiner & Son (New York). Opinion by Fischer, G. A.

Protest sustained as to embossed post cards on the authority of Abstract 24233 (T. D. 31070).

No. 27459.—Machine Parts—Forgings—Plates—Entireties—Ball Mills.—Protests 332686, etc., of Thomas Prosser & Son (San Francisco).

Fischer, *General Appraiser:* The parts of certain ball mills in these cases were imported by separate vessels and covered by separate entries. The importers contend that each shipment must be considered by itself and can not be combined with any other for the purpose of the assessment of duty. It appears that on the theory that the parts of these mills were shipped by different vessels to evade a high rate of duty, and for the reason that the said material was purchased as complete or entire mills, the collector believed it proper to consider the various shipments as comprising so many complete ball mills. The duty complained of is that at 45 per cent ad valorem under paragraph 193, tariff act of 1897. Various claims are raised in regard to the grinding plates, side plates, bolts, round steel forged balls, etc.

Assuming that the number of parts to correspond and complete a given number of ball mills were covered by the same shipment and arrived separately packed and invoiced, it would, of course, be proper for the collector to treat it as a shipment of ball mills; but when separated and brought in by different vessels each importation must be subjected to duty separately in its imported condition, and it would be improper to assemble such articles or to consider them as entireties.

This conclusion follows the ruling in United States *v.* Schoverling (146 U. S., 76), and we would refer to the following excerpt from opinion of the court in United States *v.* Irwin (78 Fed. Rep., 799, 803):

> When the barrels and stocks are shipped upon different vessels, it may happen that they can never be assembled together again as a complete gun. The dangers of navigation and other contingencies may intervene to prevent it. It is not for the customs officers in imposing duties to speculate upon these contingencies. They must take the articles as they find them to be upon examination. If they can not, by assembling them together, discover that they are really a different thing, it is their duty to classify them as the article they purport to be.

It appears clear to us that all of these importations must be considered in their unassembled state. Most of the shipments merely include so-called plates, grinders, and round steel forged balls. Where the other unspecified parts of the ball mills are

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shipped, there are found lacking most of the plates and many other of the essential parts of the ball mill. Many shipments merely comprise either plates or steel balls.

The outer and inner side plates are shown to be but steel castings, and they are entitled to classification under paragraph 135, tariff act of 1897, at the applicable specific rate per pound. The cast-steel grinding plates are the same as those passed on in the Prosser case (1 Ct. Cust. Appls., 22; T. D. 30848), and are dutiable properly as assessed. The bolts are dutiable as claimed, under paragraph 145, as steel bolts, and the steel balls are dutiable properly as forgings under paragraph 127, as claimed. Note Abstract 9241 (T. D. 26890).

The protests are sustained so far as they relate to the side plates, balls, and bolts, and are overruled in all other respects. Reliquidation will accordingly follow.

No. 27460.—Cylindrical Metal Containers.—Protests 523939, etc., of J. A. Conkey & Co. et al. (Boston), protest 525270 of Western Laundry Machinery Co. (Los Angeles), protests 420129, etc., of J. L. Vandiver et. al. (Philadelphia), protests 416145, etc., of Blumauer-Frank Drug Co. et al. (Portland, Oreg.), protests 474274, etc., of Mallinckrodt Chemical Works (St. Louis), protest 466350 of Spreckels Bros. Commercial Co. (San Diego), and protests 429319, etc., of S. L. Jones & Co. et al. (San Francisco). Opinions by Fischer, G. A.

Protests sustained as to cylindrical metal containers on the authority of United States *v.* Garramone (T. D. 31577), United States *v.* Braun (T. D. 31596), Abstract 26485 (T. D. 31851), Abstract 26595 (T. D. 31866), and Abstract 26116 (T. D. 31757).

No. 27461.—Protests Overruled.—Protest 514162 of Proctor & Gamble Co. (Cincinnati), protests 427366, etc., of Harshaw, Fuller & Goodwin Co. (Cleveland), protest 360780-3336 of Morgan's Louisiana & Texas Railroad & Steamship Co. (New Orleans), protests 440930, etc., of H. Bischoff & Co. et al. (New York), protests 472735, etc., of American Mercantile Co. et al. (San Francisco), and protests 523955, etc., of E. I. Dupont de Nemours Powder Co. (Wilmington). Opinions by Fischer, G. A.

Protests overruled for want of merit.

No. 27462.—Artificial Horsehair—Cotton Yarn.—Protests 283801, etc., of Mindlin & Roseman et al. (New York). Opinion by Cooper, G. A.

Protests sustained as to artificial horsehair. United States *v.* Eckstein (T. D. 32090) followed.

Before Board 3, December 27, 1911.

No. 27463.—Artistic Antiquities—Furniture.—Protests 500274, etc., o Jordan-Marsh Co. (Boston). Opinion by Waite, G. A.

Various articles of household furniture were held free of duty under paragraph 717, tariff act of 1909, as artistic antiquities more than 100 years old.

No. 27464.—Ground Desiccated Potatoes—Protests 523462, etc., of F. Behrend et al. (New York). Opinion by Waite, G. A.

Protests sustained as to ground desiccated potatoes. Abstract 23912 (T. D. 30901) followed.

No. 27465.—Pea Sausages.—Protest 525478 of S. S. Pierce Co. (Boston). Opinion by Waite, G. A.

Protest sustained as to pea sausages on the authority of Abstract 26680 (T. D. 31883).

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No. 27466.—PROTESTS OVERRULED.—Protests 505493, etc., of Githens, Rexsamer & Co. et al. (Philadelphia), and protests 342935, etc., of Shing Shun & Co. et al., and protests 523791, etc., of Quong Lee & Co. et al. (San Francisco). Opinions by Waite, G. A.

Protests overruled for want of merit.

No. 27467.—WEIGHT OF SUGAR—TARE.—Protests 476980-3704, etc., of American Refining Co. (New Orleans).

SOMERVILLE, *General Appraiser:* These protests involve the question as to the amount of tare allowable upon certain importations of sugar in bags from Cuba. The tare was arbitrarily taken at 2½ pounds per bag under instructions of the Secretary of the Treasury. The protests are directed against the failure of the Government to ascertain the actual tare by weighing and the consequent insufficiency of the tare allowed. The importers contend that the arbitrary schedule tare of 2½ pounds is illegal.

Article 944 of the Customs Regulations of 1903 provides as follows:

When sugar is in bags * * * *actual* tare shall be taken as follows:
* * * All receptacles for tare are to be thoroughly cleaned by scraping and sweeping, whenever the nature of the receptacle is such as to make it practicable. All bags, baskets, and mats for tare shall be weighed on scales with one-fourth pound notches or less.

The tare allowed by the Secretary is to be taken only as prima facie correct, and is liable to be changed by the actual tare ascertained by the weighing of the goods.

The question was put to one of the weighers as follows:

What did you do or cause to be done to the bags before you weighed them?—A. They were turned inside out, thoroughly cleaned by shaking and beating up against an empty barrel or anything of that kind, to get all the sugar out.

The testimony shows that in the case of the importations covered by protests 483462, 489788, 489789, 489790, and 489791, approximately 10 per cent of each mark or lot of sugar was weighed for tare, as shown by the weight certificates of the public weigher who did the weighing, which were introduced in evidence.

We sustain these five protests and reverse the collector's decision, with instructions to reliquidate the entries so as to allow for the additional tare claimed in said protests.

In the case of the three importations covered by protests 476980, 478838, and 486271, on further consideration we sustain the Government's objection to the introduction in evidence of the refinery's certificates of weights, and, there being no sufficient testimony to sustain these protests, they are accordingly overrruled and the decision of the collector affirmed in each instance.

No. 27468.—CHERRIES IN MARASCHINO—FIGS IN MARASCHINO.—Protests 347940, etc., of Reiss & Brady et al. (New York). Opinion by Somerville, G. A.

Cherries and figs in maraschino containing from 0.30 to 1.045 per cent of alcohol, which were classified as fruits preserved in their own juices under paragraph 263, tariff act of 1897, and paragraph 274, act of 1909, were held dutiable as prepared edible fruits (par. 262, act of 1897, and par. 274, act of 1909). Protests sustained on the authority of United States *v.* Reiss (166 Fed. Rep., 746; T. D. 29507) and Reiss *v.* United States (1 Ct. Cust. Appls., 239; T. D. 31275).

No. 27469.—PROTESTS OVERRULED.—Protests 519155, etc., of Massee & Co. et al., and protests 485447, etc., of J. P. O'Donnell Co. et al. (New York), protest 449080 of S. Rosenbloom & Co. (Pittsburgh), protests 490783, etc., of Denver Fire Clay Co., and protests 504446, etc., of C. H. Wyman & Co. (St. Louis). Opinions by Somerville, G. A.

Protests overruled for want of merit.

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No. 27470.—Protests Overruled.—Protests 421804, etc., of Larini & Co. et al., and protest 519650 of Russian Caviar Co. et al. (New York), protest 511681 of Frank P. Dow Co. (Port Townsend), and protests 519426, etc., of S. & G. Gump Co. et al., and protest 523785 of Paul Rieger & Co. (San Francisco). Opinions by Hay, G. A.

Protests overruled for want of merit.

Before Board 1, December 29, 1911.

No. 27471.—Schmaschen Gloves.—Protest 403978 of Max Mayer & Co. (New York). Opinion by McClelland, G. A.

Women's leather gloves classified under paragraph 455, tariff act of 1909, as lambskin gloves were held dutiable as schmaschen gloves (par. 454), as claimed by the importers.

No. 27472.—Olive Oil in Tins.—Protests 510780, etc., of Carmel Wine Co. et al., and protest 510857 of Lehn & Fink (New York). Opinions by McClelland, G. A.

Protests sustained as to olive oil in commercial 5-gallon tins.

No. 27473.—Willow Baskets.—Protests 525206-3825, etc., of Illinois Central Railroad Co., protests 413197, etc., of M. Rice & Co. et al. (Philadelphia), and protests 433361, etc., of American Import Co. et al., and protest 527864 of Meier & Frank Co. (Portland, Oreg.). Opinions by McClelland, G. A.

Protests sustained as to willow baskets. Note Brody *v.* United States (T. D. 31573).

No. 27474.—Sesame Oil.—Protest 450282-34753 of Ida Glick (Chicago). Opinion by McClelland, G. A.

Merchandise classified as olive oil under paragraph 58, tariff act of 1909, was found to be sesame oil and held free of duty under paragraph 639 of said act.

No. 27475.—Apron Leather.—Protest 429208 of H. F. Livermore Co. (Boston). Opinion by McClelland, G. A.

Protest sustained as to apron leather. United States *v.* Richards (1 Ct. Cust. Appls., 537; T. D. 31548) followed.

No. 27476.—Olives in Brine.—Protest 444664-34391 of Charles Staoropoulos (Chicago).

McClelland, *General Appraiser:* The merchandise subject of this protest consisted of olives in tins. The appraiser reported that the olives were packed in olive oil and that the olives and the oil were separated for dutiable purposes.

The oil was assessed at 50 cents per gallon under paragraph 38 of the tariff act of 1909, and it is against this assessment that protest is made.

The uncontradicted testimony on behalf of the importer shows that the liquor in the tins with the olives was a brine which was a mixture of olive oil, vinegar, and salt. It therefore appears that the separation by the appraiser was not warranted and that the collector's assessment on the liquor as olive oil was erroneous.

The protest is sustained.

No. 27477.—Leather Gloves.—Protest 522986 of Mark Cross Co., and protests 510068, etc., of F. Fitzgibbon & Co. et al. (New York), and protests 500829 and 517755 of Manheimer Bros. (St. Paul). Opinions by McClelland, G. A.

Protests sustained as to stitched leather gloves. Note United States *v.* La Fetra (178 Fed. Rep., 1006; T. D. 30471) and Carson *v.* United States (T. D. 31656).

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No. 27478.—Protests Overruled.—Protests 410799-31907, etc., of American Shipping Co. et al. (Chicago), protest 499197 of Hanselt & Luneschloss (New York), protest 518453 of Morimura Bros. (Port Townsend), and protest 482747 of Wilfred Schade & Co., and protests 410884, etc., of Scruggs, Vandervoort & Barney Dry Goods Co. (St. Louis). Opinions by McClelland, G. A.

Protests overruled for want of merit.

Before Board 2, December 29, 1911.

No. 27479.—Paper with Surface Design.—Protest 510819 of Japan Paper Co. (New York). Opinion by Fischer, G. A.

Paper inadvertently classified as imitation japan paper under paragraph 413, tariff act of 1909, was held dutiable as paper with a surface design (par. 411). Protest sustained.

No. 27480.—Book-Sewing Machines.—Protest 470513-35950 of G. W. Sheldon & Co. (Chicago). Opinion by Fischer, G. A.

Protest sustained as to book and pamphlet sewing machines. Abstract 27179 (T. D. 32031) followed.

No. 27481.—Joggling and Punching Machine—Machine Tools.—Protest 509949 of W. H. Allison (Detroit).

Fischer, *General Appraiser:* The machine here in question is a combined joggling and punching machine. It is a hydraulic bending, punching, and shearing apparatus, and the claim that this machine is a machine tool is well founded. The assessment of duty at 45 per cent ad valorem under paragraph 199, tariff act of 1909, is reversed. * * *

No. 27482.—Machine Parts—Castings.—Protest 504174 of P. H. Petry Co. (New York). Opinion by Fischer, G. A.

The merchandise consisted of an iron bed and an iron inserting frame to be used in a printing or embossing machine. The articles were classified as manufactures of metal under paragraph 199, tariff act of 1909, and held dutiable as castings (par. 147), as claimed by the importers.

No. 27483.—Malines Nets.—Protest 512074 of Abraham & Straus et al. and protests 506648, etc., of Voss & Stern et al. (New York). Opinions by Howell, G. A.

Protests sustained as to Malines nets on the authority of Abstract 24701 (T. D. 31255).

No. 27484.—Metal-Thread Embroidery.—Protest 417527 of Kern, Loewi & Mendel (New York). Opinion by Howell, G. A.

Merchandise inadvertently classified as artificial silk embroidery under paragraph 405, tariff act of 1909, was held dutiable as metal-thread embroidery (par. 179), as claimed by the importers.

No. 27485.—Unbleached Straw Braids.—Protest 450870 of Carlowitz & Co. (New York). Opinion by Howell, G. A.

Straw braids, classified as bleached, under paragraph 422, tariff act of 1909, were held dutiable as unbleached under the same paragraph. Protest sustained.

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No. 27486.—STRAW ORNAMENTS.—Protest 458680 of Veit, Son & Co. (New York). Opinion by Howell, G. A.

Articles classified as silk ornaments under paragraph 402, tariff act of 1909, were held dutiable as manufactures in chief value of straw (par. 463), as claimed by the importers.

No. 27487.—SILK BELTING.—Protests 456599 and 463928, etc., of Johnson, Cowdin & Co. (New York). Opinions by Howell, G. A.

Merchandise classified as metal-thread beltings under paragraph 179, tariff act of 1909, was held dutiable as silk beltings (par. 401). Protests sustained.

No. 27488.—SCALLOPED NOTTINGHAM CURTAINS.—Protest 462888 of Mills & Gibb (New York). Opinion by Howell, G. A.

Scalloped curtains, classified as scalloped articles, under paragraph 349, tariff act of 1909, were held dutiable as curtains made on the Nottingham lace-curtain machine (par. 351), as claimed by the importers.

No. 27489.—ELASTIC BELTING.—Protests 463696, etc., of Baum, Cohen & Shire (New York). Opinion by Howell, G. A.

Elastic belting was held dutiable as a manufacture of india rubber under paragraph 463, tariff act of 1909, as claimed by the importers, rather than as silk belting (par. 401), as assessed.

No. 27490.—MANILA HEMP PLAITS.—Protest 467290 of Aitken, Son & Co. (New York). Opinion by Howell, G. A.

Protest sustained as to manila hemp plaits. Abstract 25927 (T. D. 31720) followed.

No. 27491.—PROTESTS OVERRULED.—Protest 496122 of J. L. Biess, protests 524855, etc., of Gallia Textile Co. et al., protests 474003 of F. W. Seybel & Co., protests 440803, etc., of Stern Bros. et al., and protests 473072, etc., of A. A. Vantine & Co. (New York), and protests 507162, etc., of Clayburgh Bros. et al., and protests 163505, etc., of Mendelson Bros. et al. (San Francisco). Opinions by Howell, G. A.

Protests overruled for want of merit.

BEFORE BOARD 3; DECEMBER 29, 1911.

No. 27492.—BAGGING FOR COTTON. CONFESSION OF JUDGMENT.—Protests 570754, etc., of American Manufacturing Co. (New York).

WAITE, *General Appraiser:* The merchandise covered by these protests consists of covering for cotton, invoiced as "two rolls of bagging for cotton made of jute butts and waste, 18.82 per cent jute butts, 81.18 per cent wastes, 100 yards.". It was assessed for duty at the rate of six-tenths of 1 cent per square yard under the provisions of paragraph 355, tariff act of 1909. It is claimed by the protestants to be dutiable at the rate of 45 per cent ad valorem under paragraph 358, with certain additional claims.

Government counsel asked that these cases be suspended; request for suspension was denied by the board, upon which the Government consented that the protests should be sustained. The board therefore declined to hear further testimony in the cases and ordered that they be submitted. Upon the consent given by the Government counsel in open court, the protests are sustained and assessment will be made under the provisions of paragraph 358, as claimed.

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No. 27493.—Protests Overruled.—Protest 523729 of P. L. Alessandroni & Son, and protest 523774 of O. G. Hempstead & Son (Philadelphia), and protests 501291, etc., of H. B. Graham et al. (San Francisco). Opinions by Waite, G. A.

Protests overruled for want of merit.

No. 27494.—Gauge.—Protest 523634 of Sonn Bros. & Co. (New York). Opinion by Somerville, G. A.

The board sustained a claim for allowance on account of an excessive gauge of brandy.

No. 27495.—Clerical Error.—Protest 491092-3702 of Mente & Co. (New Orleans). Opinion by Somerville, G. A.

The board sustained a claim for relief on the ground of clerical error.

No. 27496.—Shortage.—Protest 520130 of A. Steinhardt & Bro. (New York) and protest 514200 of Charles H. Wyman & Co. (St. Louis). Opinions by Somerville, G. A.

Protests making claim for shortage sustained.

No. 27497.—Protests Overruled.—Protest 451444 of Robert B. Ways (Baltimore), protest 576778 of Charles E. Lauriat Co. (Boston), protest 518086-3787 of J. D. Blakemore & Co. (New Orleans), protest 515840 of Michele Ajello, and protests 475994, etc., of Warner Sugar Refining Co. (New York), protest 518471 of Wilfred Schade & Co. (Norfolk), and protest 520800 of Macondray & Co. (San Francisco). Opinions by Somerville, G. A.

Protests overruled for want of merit.

No. 27498.—Coverings of Specific-Duty and Free Goods.—Protests 506358, etc., of Young, Smyth, Field Co. et al. (Philadelphia). Opinion by Hay, G. A.

Paper, cardboard, and pasteboard wrappings or containers of merchandise subject to specific duty or free of duty were held nondutiable, as claimed by the importers. United States *v.* Matagrin (1 Ct. Cust. Appls., 309; T. D. 31406) followed.

No. 27499.—Straw Bottle Covers.—Protest 495221 of R. J. Alther (San Francisco). Opinion by Hay, G. A.

Protest sustained as to straw bottle covers. G. A. 3836 (T. D. 17961) followed.

Decisions on Applications for Rehearing.

No. 27500.—Rehearing Denied.—Application by the protestants for rehearing on protests 479085, etc. (New York), of Maldonado & Co., decided September 26, 1911, Abstract 26716 (T. D. 31899). No. 374. Before Board 1, December 5, 1911.

Application denied.

No. 27501.—Rehearing Granted—Fur Waste.—Application by the Government for rehearing on protests 496918, etc. (New York), of Fuchs & Co., decided October 21, 1911, Abstract 26919 (T. D. 31940). No. 381. Before Board 1, December 5, 1911.

Application granted. Fur waste held free of duty as undressed furs under paragraph 573, tariff act of 1909, is claimed by the Government to have consisted of waste from dressed skins and therefore to have been properly classified as waste (par. 479).

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No. 27502.—Rehearing Granted—Toy Mirrors—Lamps.—Application by the protestants for rehearing on protests 400629, etc. (St. Louis), of Butler Bros., decided October 19, 1911, Abstract 26896 (T. D. 31940). No. 383. Before Board 1, December 5, 1911.

Application granted. Articles classified as mirrors under paragraph 109, tariff act of 1909, are claimed to be dutiable as toys (par. 431), and colored lamps classified as decorated glassware (par. 98) are claimed to be dutiable as manufactures of glass (par. 109).

No. 27503.—Rehearing Granted—Chemical Glassware.—Application by the protestants for rehearing on protests 177056, etc. (St. Louis), of Charles H. Wyman & Co., decided October 16, 1911, Abstract 26860 (T. D., 31940). No. 385. Before Board 1, December 5, 1911.

Application granted. Various articles of chemical glassware classified as blown glass under paragraph 100, tariff act of 1897, are claimed to be dutiable as maunfactures of glass (par. 112).

No. 27504.—Rehearing Granted—Feather Articles.—Application by the protestants for rehearing on protests 262261, etc. (New York), of Germain, Hoffbauer & Helm Co., decided November 8, 1911, Abstract 27080 (T. D. 32006). No. 390. Before Board 1, December 5, 1911.

Application granted. Feather articles in part of metal are claimed to be dutiable as manufactures of metal under paragraph 193, tariff act of 1897, rather than as feathers (par. 425), as assessed.

No. 27505.—Rehearing Granted—Fish in Drums.—Application by the protestants for rehearing on protests 520941, etc. (Philadelphia), of F. H. Fromm & Co., decided November 21, 1911, Abstract 27175 (T. D. 32031). No. 392. Before Board 1, December 11, 1911.

Application granted. Fish in drums classified as fish in packages of less than one-half barrel under paragraph 270, tariff act of 1909, are claimed to be dutiable as dried fish (par. 273).

No. 27506.—Rehearing Denied.—Application by the Government for rehearing on protest 504524 (New York), of Joseph Blank, decided November 18, 1911, G. A. 7300 (T. D. 32018). No. 394. Before Board 2, December 11, 1911.

Application denied.

No. 27507.—Rehearing Granted—Sufficiency of Protest.—Application by the Government for rehearing on protest 410494 (Boston) of H. M. Peyser & Co., decided November 3, 1911, Abstract 27051 (T. D. 31987). No. 387. Before Board 3, December 18, 1911.

Application granted. The board held coverings of specific-duty goods nondutiable, and the Government contends that the protest is insufficient to raise this issue.

No. 27508.—Rehearing Granted—Leather Cases.—Application by the protestants for rehearing on protest 432106 (New York) of Mark Cross Co., decided August 12, 1911, Abstract 26335 (T. D. 31813). No. 351. Before Board 3, December 26, 1911.

Application granted. On stipulation of counsel the board set aside its order of November 10, 1911, Abstract 27250 (T. D. 32073), denying rehearing. Leather cases classified under paragraph 452, tariff act of 1909, as fitted, are claimed to be dutiable under the same paragraph as leather cases not fitted.

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No. 27509.—Rehearing Granted—Collar Supporters—Coated Wire Articles.—Application by the protestant for rehearing on protests 471252, etc. (New York), of L. A. Consmiller, decided November 21, 1911, Abstract 27182 (T. D. 32031). No. 396. Before Board 2, December 28, 1911.

Application granted. Collar supporters classified as manufactures of silk under paragraph 403, tariff act of 1909, are claimed to be dutiable as coated wire articles (par. 135).

No. 27510.—Rehearing Granted—Schappe Silk Yarns.—Application by the Government for rehearing on protest 450447 (New York) of J. Bourdis & Co., decided November 20, 1911, Abstract 27162 (T. D. 32031). No. 397. Before Board 2, December 28, 1911.

Application granted. The Government contends that certain schappe silk yarn was classified under paragraph 397, tariff act of 1909, according to its correct size.

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APPENDIX TO T. D. 31776.

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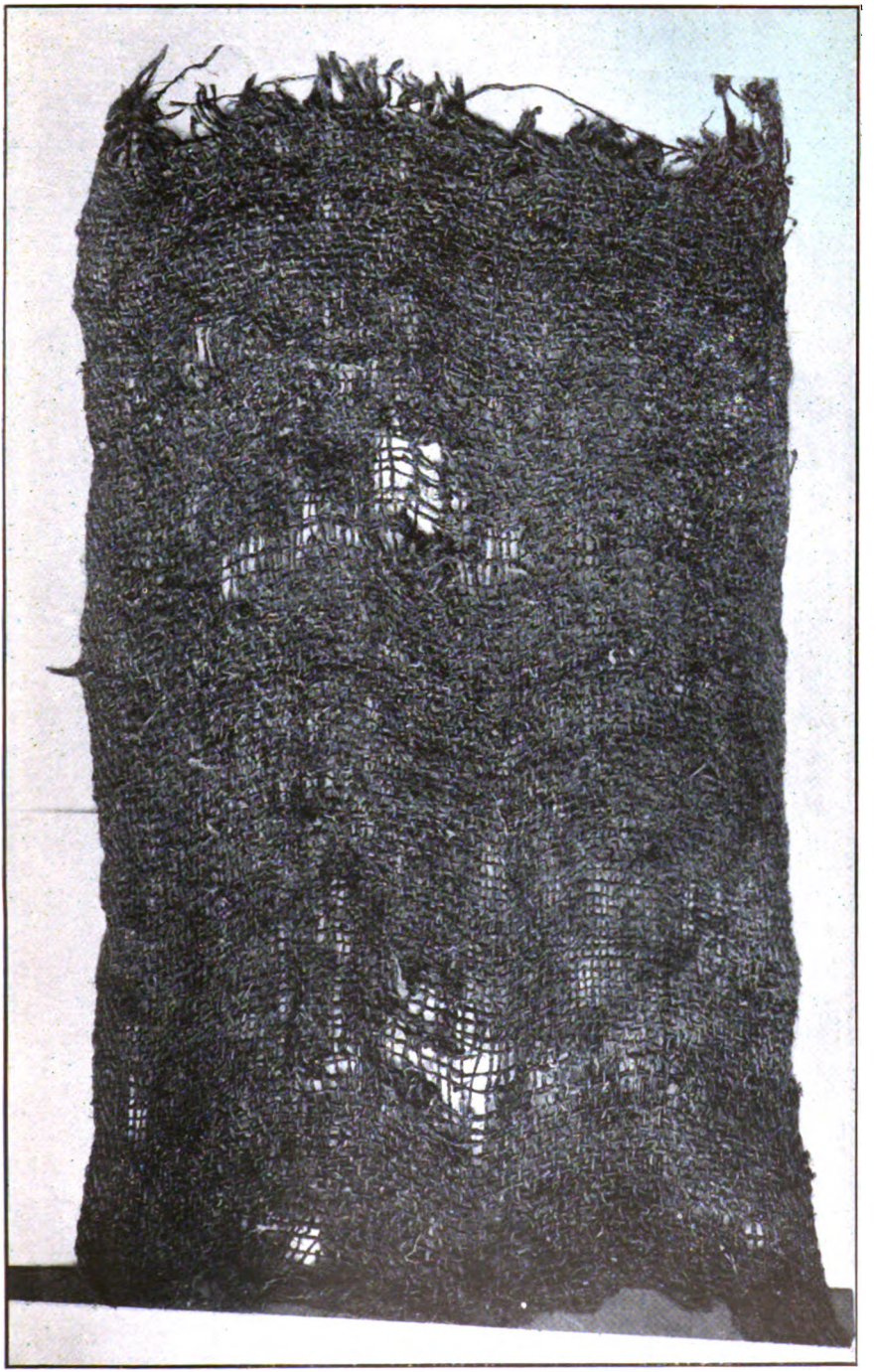

Exhibit 1.—(6′ x 3′ 2″), selected sides, class 1, dutiable as waste, at 10 per cent ad valorem under paragraph 479. (T. D. 28202.)

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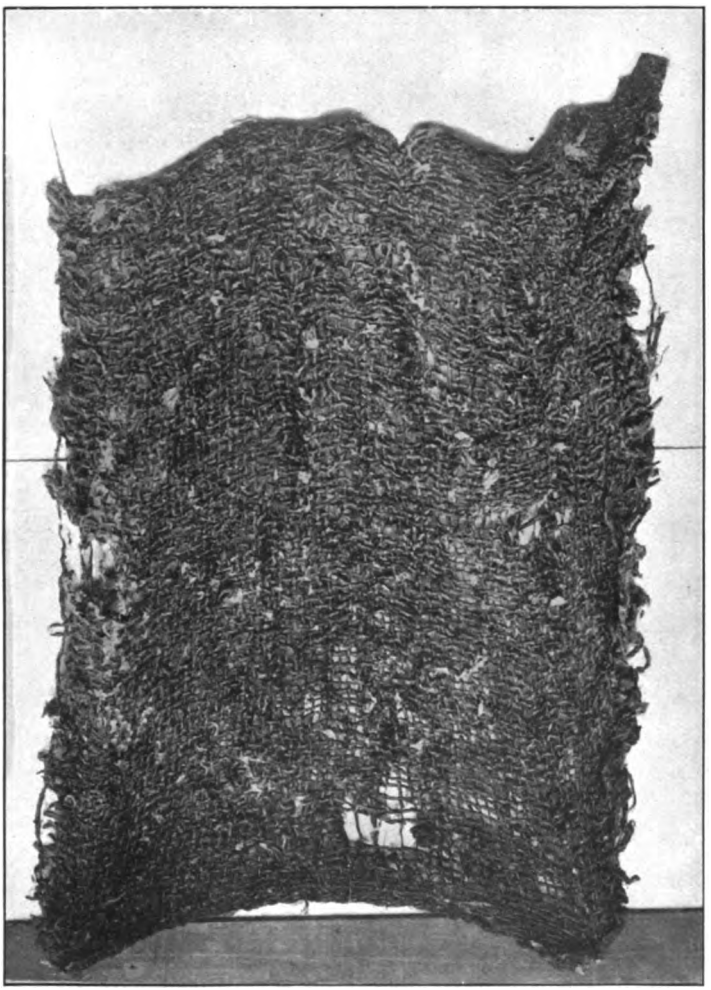

EXHIBIT 2.—(3′ x 3′ 4″), selected sides, class 1, dutiable as waste, at 10 per cent ad valorem under paragraph 479. (T. D. 28202.)

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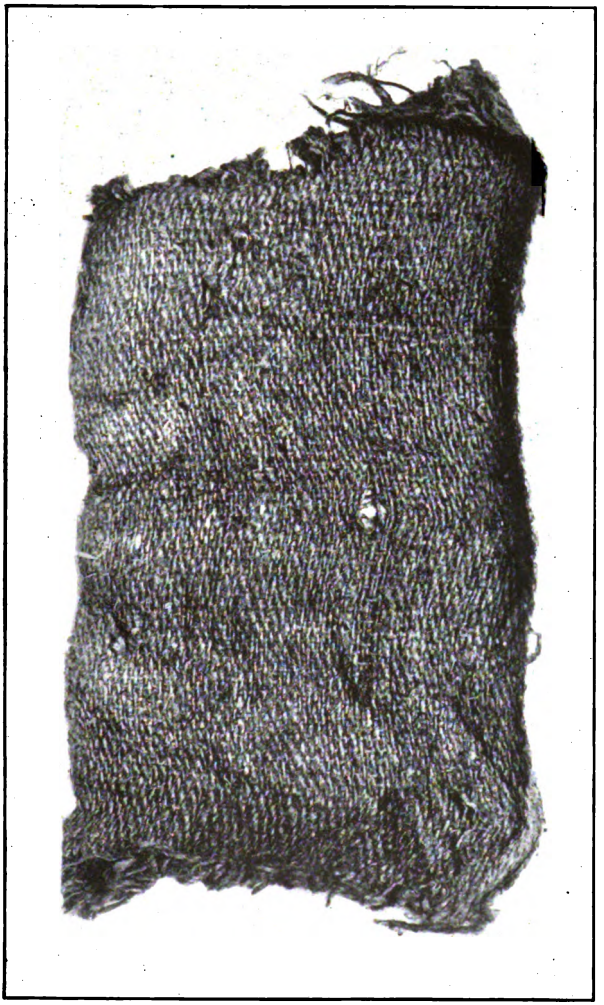

Exhibit 3.—(4′ x 2′ 6″), selected sides, class 1, dutiable as waste, at 10 per cent ad valorem under paragraph 479. (T. D. 28202.)

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Exhibit 4.—(7′ 2″ x 3′ 4″), original gunny, class 2, dutiable as waste, at 10 per cent ad valorem under paragraph 479. (T. D. 28202.)

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Exhibit 5.—(7′ x 3′ 4″), scrap gunny, or rags, free of duty under paragraph 660. (T. D. 31447.)

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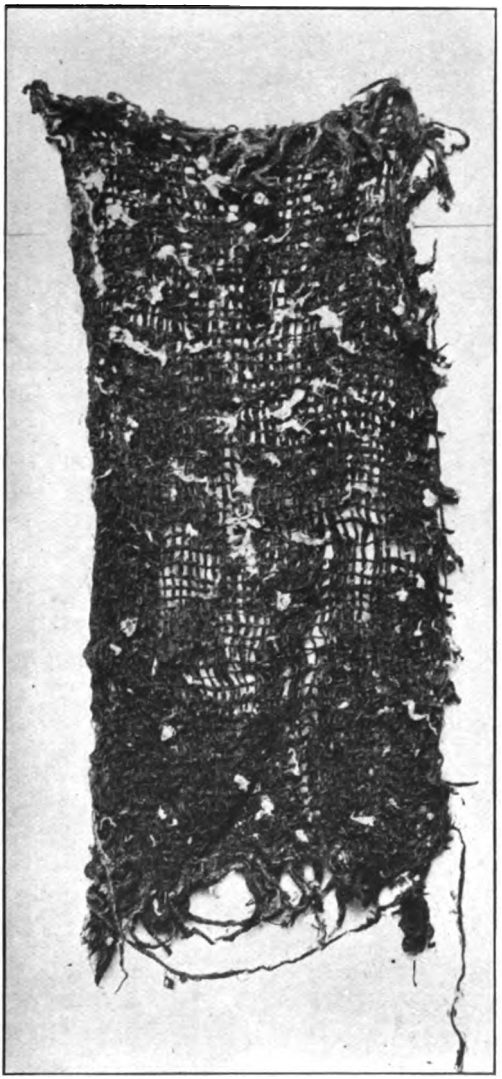

Exhibit 6.—(1′ 6″ x 3′ 9″), scrap gunny, or rags, free of duty under paragraph 660. (T. D. 31447.)

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EXHIBIT 7.—(3′ 6″ x 1′ 9″), sugar bag, secondhand, cut and torn but of sound material, dutiable as waste, at 10 per cent ad valorem, under paragraph 479 (T. D. 30800, Abstract 23742.)

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Exhibit 8.--(3′ 3″ x 2′ 3″), sugar bag, secondhand, cut and torn but of sound material, dutiable as waste, at 10 per cent ad valorem, under paragraph 479. (T. D. 30800, Abstract 23742.)

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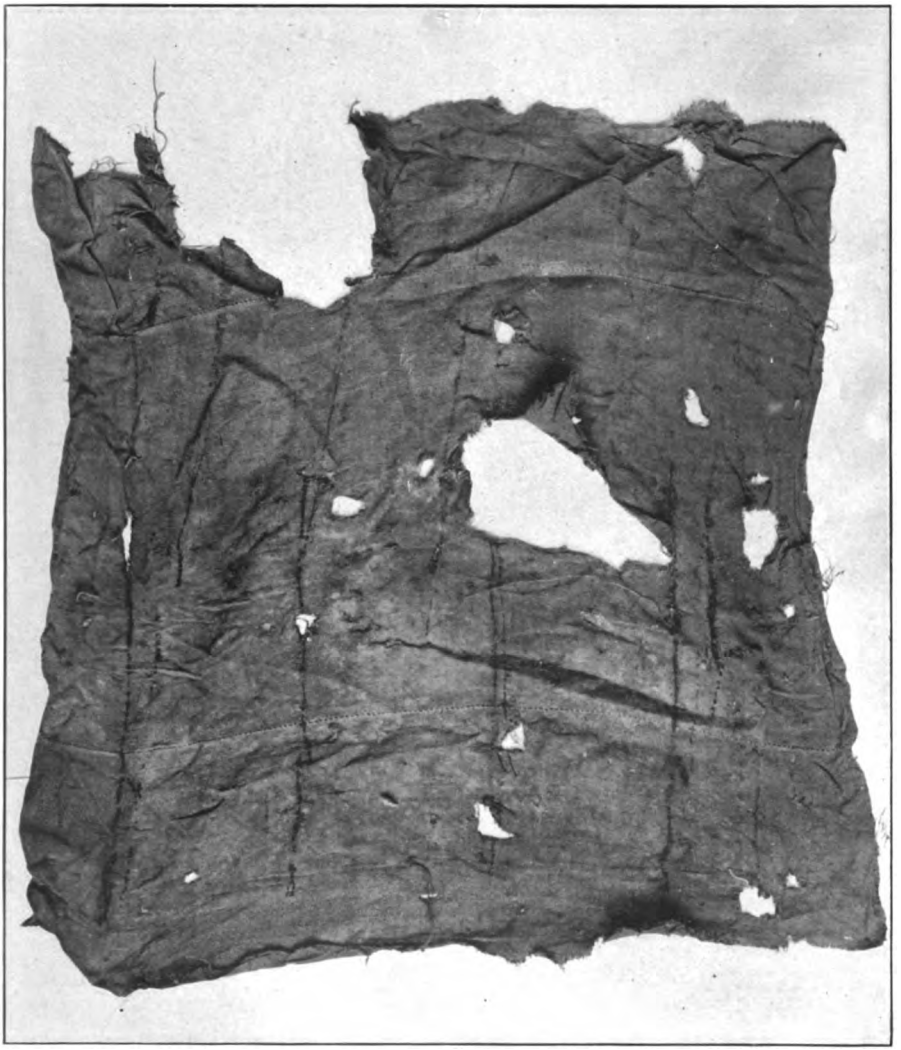

EXHIBIT 9.—(4′ x 4′), old burlap cloth and old burlap bags, or burlaps, free of duty as paper stock under paragraph 644.

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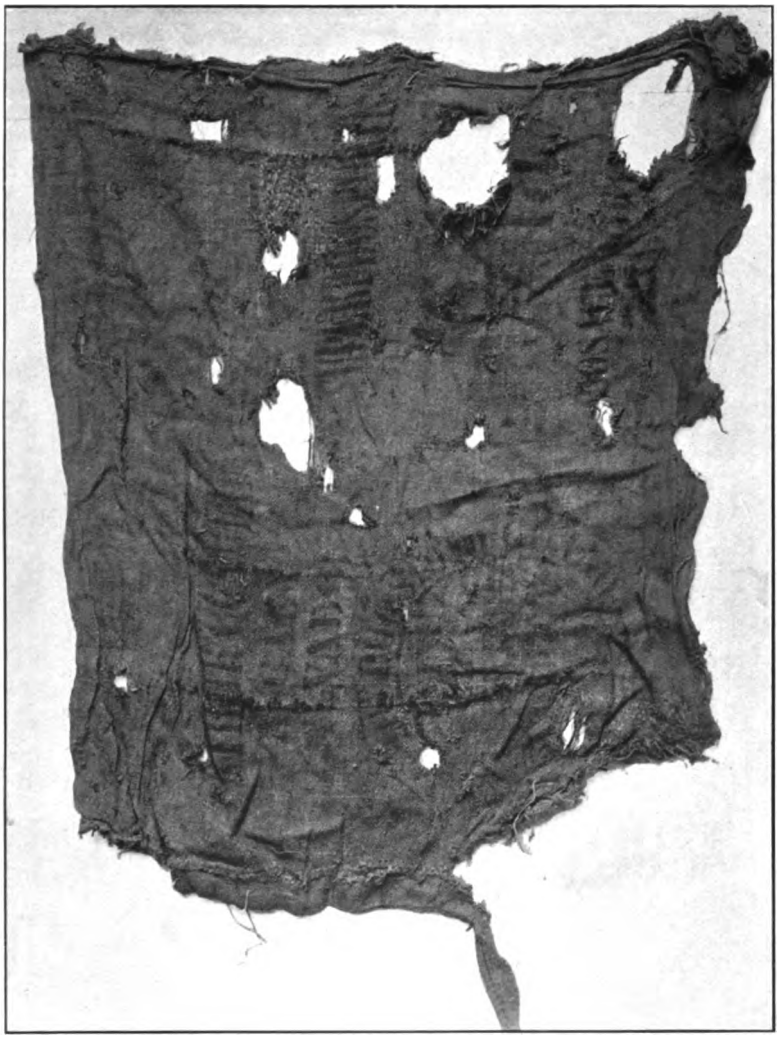

EXHIBIT 10.—(3′ x 3′ 8″), old burlap cloth and old burlap bags, or burlaps, free of duty as paper stock under paragraph 644.

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Exhibit 11.—(4′ 6″ x 12″), old burlap cloth and old burlap bags, or burlaps, free of duty as paper stock under paragraph 644.

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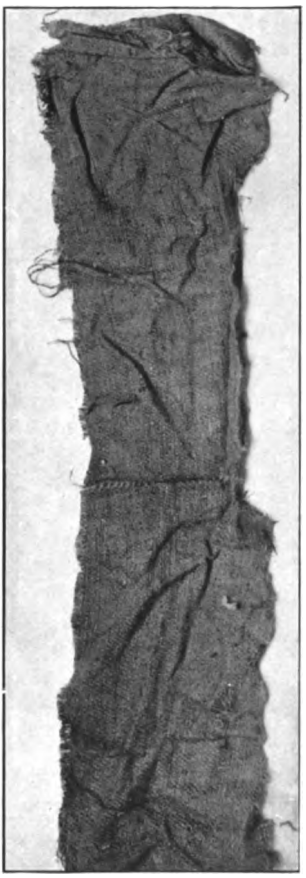

EXHIBIT 11.—(4′ 6″ x 12″), old burlap cloth and old burlap bags, or burlaps, free of duty as paper stock under paragraph 644.

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